

No. 1241

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR AND MRS
MARY THOMPSON,

Appellants,

vs.

TONOPAH NORTH STAR TUN-
NEL AND DEVELOPMENT
COMPANY (A CORPORATION),

Appellee.

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TRANSCRIPT OF RECORD.

VOL. II.

(Pages 305 to 602, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Nevada.

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(Testimony of John McCune.)

Q. What work was that?

A. Well, I worked a few shifts up there on a claim called the Dave Lewis Hope, I believe, Lewis Hope, would not be positive whether there was a Dave attached to it or not.

Q. Where was that claim?

A. It is on the North Star ground, what they call the North Star ground now.

Q. Do you know where Oddie Mountain is?

A. Yes.

Q. How does this claim lie with reference to Oddie Mountain?

A. It lays right on Oddie Mountain.

Q. When did you do this work?

A. I would not be right positive about the date; but if I remember right it was along about the first of February.

Q. What year? A. 1902.

Q. What did this work consist of, what kind of work was it?

A. It was a crosscut you might say; an open cut.

Q. Now can you describe any way so the Judge would know about where on that hill that cut was put?

A. Well, I don't know.

The COURT.—Can you describe it with reference to any other work, or monument?

Q. Something that is there now, for instance?

A. Something that is there now?

Q. Yes.

(Testimony of John McCune.)

A. Well, I will tell you; I was only up there once after I done this work, after this outfit started to work there, and the work that we done was below their shaft, that is, the first shaft they started.

Q. Is the hoist on that shaft now?

A. Well, I don't know; I haven't been around on there for these last two years, but I was up there once after I done this work; I only come in and out of Tonopah once and a while for supplies; I am not staying right in Tonopah, and I am not posted on there, on anything of the kind, for I am in to-day and out to-morrow; I come in there for supplies once in a while.

Q. You know where the North Star shaft is on Mount Oddie?

A. The first shaft they started I know where it is; may have started a dozen more for all I know.

The COURT.—Where was this point with reference to that North Star shaft; was it close to that?

A. What?

Q. Was it close to the North Star shaft, the work you did? A. Yes, wasn't very far from it sure.

Q. When did you go up there; you think you went up after you did the work one time, when was that?

A. I don't know, it was probably a month or six weeks after I done the work; would not be right positive.

Q. How did the cut look then when you went back up there? A. It was covered up.

Q. What was it covered up with?

A. With a dump, the company dump, I suppose.

(Testimony of John McCune.)

Q. Now, did you use any powder and steel in doing this work? A. Yes.

Q. Where did you get that powder and steel?

A. Davis & Lothrop's, I guess.

Q. Who showed you where to go to work?

A. Dave Lewis.

Q. Did Dave Lewis go up on the hill with you?

A. Yes.

Q. Did Dave Lewis show you any monuments or anything up there?

A. Well, he showed me the distances; showed me what he called the location monument, and I didn't even look at the notice; he showed me one, and he says, "This is my location monument," and we just stood there, and he said, "There is another monument," so I didn't pay much attention to the monuments, to tell the truth, but this location monument I did.

Q. Where was that location monument?

A. Well, it was up on the ridge, on the ridge there, about, I guess, north of where we done the work.

Q. About how far north would you figure it?

A. It might be a little bit west of north.

Q. About how far?

A. I didn't have any compass for that.

Q. How far would you guess it to be?

A. Well, I would guess it probably 300 feet, some place in that neighborhood.

Q. Did you see any other work on the top of that hill when you went up there that day?

(Testimony of John McCune.)

A. Well, down below, there was a little work done there; I spoke to old Dave, says I, "Whose work is that down there," and he says that—

Mr. GOODWIN.—I move to strike that out what they said there, and object on the ground that unless the declaration is made in the presence of a co-locator, or some of the plaintiffs in the action, it cannot bind us.

The COURT.—Not the objection and an exception, and I will take it, subject to the objection.

Q. What was that conversation; what about that work?

A. We went up to the location monument, I made the remark, says I, "Dave, whose work is that down there?" and he says, "That ain't on my ground at all"; so I didn't go down and investigate it at all.

Q. Which direction was that work from the location monument?

A. Well, west, you might say a little west.

Q. Well, about how far west, up or down the hill?

A. Down the hill.

Q. Down the hill? A. Yes.

Q. Could you see from where you were whether it was a shaft, or cut, or what it was?

A. I should judge, I thought it was a cut; that it, I wasn't down to the place, and the work at all, but I supposed it was a cut running into the hill.

Q. How far was that cut where you made the cut?

A. Well, I guess it would be a little less than the location monument.

(Testimony of John McCune.)

Q. A little less than the distance of the location monument?

A. It was down the hill; well, you could safely say 300 feet.

Q. Did any one assist you in doing this work?

A. Yes.

Q. Who was it? A. Enright.

Q. When you went up to do this work was there any cut where you started this cut in?

A. There was a little work there, not anything to speak of.

Q. A little work? A. Yes.

Q. How much work was it, a foot deep?

A. Oh, it was just a little work done; that is, you could not call it work, it was just enough to show that somebody had been on the ground, I guess.

Q. Been scratching there?

A. Well, that is all it was; it wasn't no location work, or anything like location work; I could not call it location work at all.

Q. How deep did you say this hole was when you got there? A. Which hole?

Q. The work you found when you got there?

A. Well, it didn't exceed a foot, I said, I guess.

Q. How wide was it?

A. Oh, it was just enough to show that there was somebody there, it was kind of drawn, or shoveled, the dirt, or I don't know whether they had a shovel at all or not.

(Testimony of John McCune.)

Q. Who paid you for this work?

A. Dave Lewis.

Q. Do you know when he paid you?

A. He paid me about, I think it was within the next day sometime.

Q. The COURT.—The next day after doing the work?

A. Yes; it was along in the evening some time; it was next evening, I believe.

Cross-examination by Mr. GOODWIN.

Q. You say this cut that you have testified to was south, was it, of the point where they started their first shaft, the North Star people started their first shaft?

A. What cut is that?

Q. Where you worked? A. South.

Mr. PITTMAN.—I did not understand him to say that.

Q. Do you know where the North Star Company started their first shaft?

A. Yes, I was over the ground once after I done the work.

Q. When they first started their shaft?

A. Yes, the first shaft they started.

Q. Was this place where you worked south of that?

A. No, I never had the compass; if I got the thing located right, it is west; I call it west.

Q. With reference to the monument, was it above the shaft, or below the shaft?

A. Where I done this work?

Q. Yes. A. It was below the shaft.

(Testimony of John McCune.)

Q. It was below the shaft? A. Yes.

Q. How many posts did you see; how many monuments?

A. Well, I will tell you, there was monuments all around the hill there, that is, more or less, and I didn't go around to the monuments.

Q. How many did you see that you understood were the Dave Lewis Hope monuments?

A. Well, I will tell you, I didn't even look at Dave Lewis' notice.

Q. How many did Dave Lewis tell you were his that you saw?

A. He says, "There is my location monument," and he says, "I run a thousand feet this way, and five hundred feet," he says, "north."

Q. That is a thousand feet south and 500 feet north?

A. Yes.

Q. Was it north or a little west of north?

A. Which?

Q. The direction that he run?

A. I didn't have a compass, I told you I never tried the compass on it, and I don't know; I supposed it was south.

Q. The reason I ask you, in your direct examination when you said the distance, I understood you to say north, or a little west of north, was that right?

A. Yes, I don't know how it varies; it might be a little west of north.

(Testimony of John McCune.)

Q. Did he point out to you any other stakes that he claimed as the Dave Lewis Hope stakes?

A. He went from this location monument south, and he says, "There is my monument up there"; there was three monuments.

Q. How far was that monument from where you did the work? A. Well, I guess it was—

Q. Right close there, wasn't it?

A. No, this was the end monument that we went to; it didn't take much of a monument there, just a few rocks piled up; and he said he wanted to measure that particularly, and we measured it; I didn't pay much attention to it, to tell the truth, but if I remember right it lapped over onto the company ground, I remember.

Q. That is, it lapped over a little bit onto the Mizpah?

A. Yes; if I remember right, if I didn't make a mistake in the tape; the wind is blowing up and down hill, and over rocks.

Q. This stake that he told you was the south center, was down there on the Mizpah ground, wasn't it?

A. No, I didn't see that stake, the corner stake; I said there was three monuments, according to our measurement it lapped over.

Q. Did he claim one of those stakes as his?

A. No, sir; he says, "There is my stake up there, that is my corner monument"; I didn't go up, there were three monuments there.

Q. Now, you spoke about some work having been done where you started in to work?

(Testimony of John McCune.)

A. Yes, a little work.

Q. Did it look like anything had been filled in there?

A. No.

Q. Nothing of that sort? A. No.

Q. Where was the nearest work to this; did you see any other work around close there?

A. No, not only this cut I speak of, from the location monument.

Q. You say that was about 300 feet from the location monument?

A. Well, yes, somewheres in that neighborhood.

Q. About 300 feet west?

A. Well, you might call it—it might be a little south.

Q. A little south of west?

A. Yes, I don't know, a man running over the hills there, he ain't supposed to know exactly.

Q. Was it so you could see it standing there at the location monument? A. Yes, it was there in sight.

Q. Who paid you for that work?

A. Dave Lewis.

Q. Did Dave Lewis pay you himself, did he hand you the money? A. Yes, that is what he done.

Q. You say you worked two shifts?

A. Three.

Q. Three shifts, was it?

A. Yes, I worked three and Enright worked four; I only charged old Dave Lewis for three shifts.

Q. When were you last on the ground at this point?

(Testimony of John McCune.)

A. I guess it was along probably the last of February.

Q. Wasn't it later than that that you say you were up there after the North Star started its shaft?

A. I don't remember; I know I went along the side hill one time after they had started the first shaft, and if I ain't mistaken, it was along the last of February some time.

Q. Supposing they did not start their shaft there until some time in June, as a matter of fact; supposing you are mistaken and they did not start their shaft there until some time early in June?

A. Well, I am convinced that it was along the latter part of February, or the first of March that I went over the ground.

Q. And as I understand you, when you went over the ground this time, they had already started their first shaft?

A. That is right.

Q. If they did not start their shaft until some time in June, you are badly mistaken as to the date, aren't you?

A. Well—

Q. I don't say you are mistaken; I say supposing, as a matter of fact, they did not start the shaft until some time in June, and you saw them after they started the shaft, you must be mistaken as to the time?

A. Well, certainly.

Q. I do not say you are mistaken, but it is just on that assumption. What shaft was this work in that you say you saw there when you started your cut?

(Testimony of John McCune.)

A. Oh, it was just, you might merely say it was scratched on top of the ground.

Q. How long was it and how deep was it?

A. There wasn't anything to it; it was just enough to show somebody had been there at work.

Q. Did you start in this same place?

A. Started a little bit below, I guess, Dave Lewis says, "Cut in here."

Q. When you got through with your work there, you had cut out whatever this was, hadn't you, that is, you drove into it, and had sort of swallowed it up, hadn't you?

A. We started right below, just below that, and run a cut in.

Q. Started below and ran a cut into the mountain, and when you got through this work was all taken up by your work, wasn't it? A. Yes.

Q. Do you know where the cut is now; that is, do you know what condition it is in now, whether it is covered with the dump of the North Star?

A. That is what I was telling you a while ago; the last time I was over the ground our work was covered up there with the company dump.

Q. When you were there last was there any shaft sunk where you had worked?

A. No, the shaft, that is what they call the company shaft there—

Q. I don't mean the company shaft, I mean the point where you did your work, when you were last there was

(Testimony of John McCune.)

a little shaft sunk, say 7 feet deep and 5 by 8 in the clear, right in the bottom of the work that you did?

A. When, after I went out there the second time?

Q. Yes? A. No, our work was covered up.

Q. Your work was all covered up then? A. Yes.

Q. Now, tell me again, as near as you can, when it was that you went back there and saw this work covered up, or that is, went back and found that the work was covered up?

A. Well, by George, I am right positive I was out there, it might have been along in March sometime, I should judge.

Q. Along in March some time?

A. Yes, I would not be positive about it, I should judge it was along in March some time.

Q. When did you first talk to persons, other than Dave Lewis about this work? A. When?

Q. Yes, when did you first tell people about having done this work?

A. I don't know as I talked to anybody about doing the work.

Q. Did Mr. Golden or Mr. Ramsey speak to you about it? A. No.

Q. Didn't Mr. Golden ever speak to you about it?

A. Not that I remember of; I don't believe Mr. Golden or Mr. Ramsey either, ever spoke to me about the work; they know I done the work all right, but I don't remember that either one of them ever spoke to me about doing this work; not that I remember of.

(Testimony of John McCune.)

Q. Don't you know that Mr. Golden came to you and talked to you about it, and went through the whole thing and asked you all about it, and when you did it, and how much there was? A. I say no.

Q. You say no? A. Yes.

Q. Well now, are you sure of that?

A. Yes, he never made any remark of the kind to me that I remember of.

Q. Don't you know that Mr. Golden did talk with you, and that you made an affidavit, and signed and swore to it, and delivered it to him?

Mr. METSON.—I object on the ground it is incompetent and immaterial, and the time, place and circumstances are not stated.

The COURT.—That would go to show whether he had a talk or not.

Mr. GOODWIN.—It is not for the purpose of proving the contents of the affidavit.

A. I swore to an affidavit all right, but it wasn't to Frank Golden, it was for Dave Lewis.

Q. If Mr. Golden says that he has an affidavit of yours—

The COURT.—He might have an affidavit of his made for somebody else. We only want to get at the facts.

Mr. GOODWIN.—If your Honor please, right now I ask counsel if they have such an affidavit as is referred

(Testimony of John McCune.)

to on Mr. Golden's letter to produce it, and give it to me as a basis of cross-examination of this witness.

(Counsel for defendant state they have no such affidavit.)

Mr. METSON.—I never heard of such an affidavit until I saw Mr. Golden's letter.

Q. Now, since you have heard the talk here between counsel and his Honor and myself with reference to Mr. Golden, did it refresh your memory at all as to having made an affidavit, and delivering it to Mr. Golden?

A. No.

Q. You heard a good deal about the Dave Lewis Hope claim there about that time, didn't you?

A. Oh, yes, but I didn't pay much attention to it; the ground was located, and I was looking after something that wasn't located.

Q. Where was this stake situated that Dave Lewis took you to as his discovery stake, where was that situated with reference to this cut that you run?

A. Well, it might be a little west of north, or it might be almost due north for all I know, for I didn't have the compass on it.

Q. But you would say if not exactly north, if anything, it was a little west of north?

A. Yes, if anything, it was a little west of north.

Q. And about how far off?

A. Well, about 300 feet, somewheres in that neighborhood, I don't just remember.

(Testimony of John McCune.)

The COURT.—That is your best recollection; you didn't measure it, and didn't have a compass?

A. No.

Q. Did you see a notice there?

A. Well, there was a notice there, but I didn't read it.

Q. What kind of a stake was it?

A. Was no stake at all, a monument built out of stone.

Q. A monument built out of stone, and how high?

A. Oh, it was probably, maybe three and a half feet; somewheres along there.

Q. And there was no stake in the top?

A. No, the location monument wasn't.

Q. To refresh your memory: Wasn't there a stake that looked like a 4 by 4 that had been split in two?

A. It wasn't there the time I was there at the monument.

Q. It wasn't there the time you were there?

A. No.

Q. Are you sure of that?

A. Well, yes; it was down on the corner of what he called the corner monument, where them three monuments was at a distance, there was a stake in one of them.

Q. There was a stake in one of them? A. Yes.

Q. And that, as I understand you, was down in the Mizpah ground? A. It cornered.

Q. It cornered on the Mizpah? A. Yes.

(Testimony of John McCune.)

Q. So, as I gather it from you, you made the cut a little south of where the North Star first started their shaft; south or west down hill, below? A. Yes.

Q. That is the fact? A. Yes.

Q. About 300 feet north or a little northwest from there was a monument which Dave Lewis told you was his discovery monument, and in which there was a notice that you didn't read?

A. I didn't look for the notice.

Q. Then south from there, a distance of how far, about a thousand feet? A. Which?

Q. Down to the Mizpah, to that corner that was on the Mizpah? A. Well, yes, about a thousand feet.

Q. You were away about a thousand feet down towards the Mizpah and on the Mizpah saw another stake that he pointed out to you?

A. I wasn't up to those monuments.

Q. But as I understand from you, he pointed out to you a stake on the Mizpah ground, a little ways on the Mizpah ground, that he said was one of his stakes?

A. Yes.

Q. That is a fact, is it? A. Yes.

Q. Was that stake in line with the discovery stake and your cut running on down a thousand feet?

A. In line; how do you mean?

Q. Here is what I mean: Supposing here was the discovery stake?

A. It may look all right on paper, but his end monuments came right up to the Mizpah, what we supposed

(Testimony of John McCune.)

was the Mizpah, and three monuments there, and I didn't go up to the monument; there was a stake in one of them, some kind of a stake; I don't know whether it was a post or square stake; or what it was; three monuments built out of rock, and there was a post of some kind in one of them.

Q. And he told you or claimed to you, that one of those stakes was his, didn't he?

A. Yes, one of them.

Q. That is down on the Mizpah?

A. Yes, he claimed the one that the post was in.

Q. Now, starting up at the monument that he told you was the discovery monument, and then going down hill till you came to the point where you made your cut, would this stake that was down near the Mizpah be practically in a straight line with those two points?

A. You mean the corner?

Q. That stake that he pointed out to you, or the monument that he pointed out to you on the Mizpah?

A. Well, I guess it would be the side line all right enough.

Q. Might it not be the center line?

A. It was the southeast corner, is where these three monuments was.

Q. Southeast corner, and that was down near the Mizpah? A. Yes.

Q. Mr. McCune, will you come and look at this photograph a moment? A. Well, my eyesight is failing.

(Testimony of John McCune.)

Redirect Examination.

Q. Mr. McCune, about how wide was this cut that you made for Dave Lewis?

A. Well, it was about four feet wide.

Q. How long was it in the mountain?

A. I should judge it went in for probably 15 to 18 feet.

Q. How high a face did it have on the cut?

A. It was probably 7 or 8 feet in the face.

Q. You have spoken about these three monuments; were these three monuments that Lewis pointed out to you on a knoll or in a gulch?

A. In a draw.

Q. Now, what did Lewis say about these three monuments?

Mr. GOODWIN.—Of course, this is under our objection all the time, that the declarations of Lewis unless made in the presence of his co-locator or some of the plaintiffs in the action will not bind us.

The COURT.—I am allowing it in, subject to the objections, to be considered by the Court. Plaintiffs except.

Q. What did Lewis say about these three stakes?

A. He says "There is my corner monument up there," that is all.

Q. (The COURT.) As I understand the witness, there were three stakes there, and one of them was pointed out as his monument; not that all three were, but one of them.

A. That is right.

(Testimony of John Salsberry.)

Q. I just want to know if he designated any particular one of these three? A. No.

JOHN SALSBERY, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. What is your name? A. John Salsberry.

Q. Where do you reside? A. Tonopah.

Q. How long have you resided in Tonopah?

A. Since May 11, 1901.

Q. Attracting your attention to certain work that has been testified to about Mount Oddie, in the face of Mount Oddie, will you state to the Court what you know about that work and about this location that has been testified to, called the Dave Lewis Hope; when you became familiar with the same, if you did, and just tell it in your own way, and as near as you can, eliminating all conversation with other people and your conclusions; just state what you saw, and when you saw it.

A. To start off with the subject, I will have to express how I happened to go over there first. Mr. Golden came to me on the night of October 8th, 1901, and says, "We located the North Star Tunnel to-day, and he says, "We would like to have you go over the ground, and see what you think of it," I says "All right," and on the following day, October 9th, 1901, I went over the ground; went around where they put up two big notices, and proceeded to go over the line of

(Testimony of John Salsberry.)

the tunnel. And I went over the line of the tunnel, and on the way going up, of course I commenced on the north side and went up on the hog back, that northwest hog back that lay off of Mount Oddie, and on top of this hog back I noticed a monument there, this Dave Lewis Hope, together with a stake in it, perhaps there was a mound around it of rock two feet high or so, and in this monument was a notice, a tin can rather, with the notice in it, and this notice was something that I could hardly make out, only the date, it was in such a scrawling manner, it had evidently been located before, this ground had, and the figure had been erased with the finger, and the date changed to August 26th, 1901. Well, I don't know who changed it, but evidently it had been changed, and I looked around, and didn't see any more monuments; went clear over the ground, practically down to the Mizpah, and found no more monuments, except belonging to the Lucky Jim, the Corona and G. & H. Tunnel, and these monuments going through, belonging to the North Star; that is all I noticed that day.

Q. (Mr. GOODWIN.) What day was that?

A. October 9th, 1901. And then I was over there again; I was over with Mr. Ramsey; that was in the latter part of November, we went around to the tunnel, went over the top of the mountain again, and I showed him this notice, and we took it out and read it, and could not make heads or tails to it, only the date

(Testimony of John Salsberry.)

and the name; it was Lewis and Carr or Carr and Lewis; and we went down over the ground, and where the monument is supposed to be of the Dave Lewis Hope, which is several hundred feet from the original notice of discovery monument on the hill and came right down to the slope of the mountain on the southwest side, and we sat down there for some time; our reason for sitting down there was this; there was a little manganese stain there, and we could get a full view of the town, a nice raising point, and we sat there for some time, where this work was supposed to be done, this cut was supposed to be done; I don't know when, and that afternoon we went down the hill. On several occasions—it may sound funny, but I have sat on that identical spot where the monuments and work is supposed to be done in 1901, have sat there many a time, and there was no work at all with the exception of one time when Harry Ramsey and I—we have been there on two occasions and Harry Ramsey had a pick, and he was picking away, and that was the only work that was done there, and that didn't amount to anything. Then on another occasion I was up there with Mr. Curtis, and there was no work done there at all, nothing there whatever.

Q. When was the cut made, if you know?

A. When was the cut made?

Q. Yes, sir? A. Now, I left January 14th, 1902, and went down to the city during that epidemic, and I stayed there, must have been along in April, and

(Testimony of John Salsberry.)

when I came back the work was done; I didn't see the work done, that is the Dave Lewis Hope cut work, I didn't see that done, but I knew it was done sometime between those two dates.

Q. Where was this monument that you say had the Dave Lewis Hope notice of location in it?

A. That was near the apex of Mount Oddie.

Q. How near the apex of Mount Oddie?

A. Oh, perhaps a little over 200 feet; I knew the exact measurements, I heard it, but at that time I thought it was a little over 200 feet, but now I know it to be 240 feet.

Q. What direction was the monument from the top of Mount Oddie?

A. Well, it would be west; it would be about in a westerly direction.

Q. The monument would be west from the top of the mountain, from the apex of Mount Oddie?

A. Yes, sir.

Q. How much higher is the apex, or top of Mount Oddie than the place where this monument that you speak of rested?

A. Oh, perhaps 40 or 50 feet; it is pretty close to the apex; that is, the height of it wasn't much higher, Mount Oddie is not, than where this monument was.

Q. With reference to this monument that you speak of that had the notice in, state its position, whether on a crest, or hog's back, draw, canyon, or something of that kind?

(Testimony of John Salsberry.)

A. The discovery monument of the Dave Lewis Hope?

Q. Yes?

A. That was on the north, just a little over the north side of the hog back, coming down towards the west.

Q. What hog back?

A. The westerly hog back, the one which cuts the tunneling of these claims.

Q. Then from the top of Mount Oddie there is a hog back that runs westerly down towards town, is that true?

A. No, it runs a little north of the town, if it keeps its direction; you could see it from town very plainly; yes, you could term it that way.

Q. Is not that the only hog's back that runs from the top of the mountain?

A. No, there are several others; there is one large one running over to the G. & H. tunnel, then there is others to the other side.

Q. Give the points of the compass?

A. There is one large hog back, that is the main back, over the mountain, which runs in a southerly direction, and then there is another one, a very prominent one, running due north towards Ray, and that country in there; and there is another one, not quite so prominent, coming down in a southerly direction this side of the G. & H. tunnel; and then this westerly one, that I

(Testimony of John Salsberry.)

am referring to where the Dave Lewis Hope monument is.

Q. They apex or come together at the apex of the mountain do they? A. Yes, sir.

Q. And that is about fifty feet higher where this monument was, and that monument was 240 feet west-erly from the top? A. Yes, sir.

Q. Now, state whether or not you made search for other monuments of the Dave Lewis Hope at that time, October 9th?

A. October 9th I searched all over that ground for other monuments; and I went to all those monuments, and they happened to be fresh, most of the tunnel monuments were up, and they were marked, and you could easily tell when you reached a cross and monu-ment who it belonged to, because everything was newly located at that time; and I found no monument what-ever that belonged to the Dave Lewis Hope Claim ex-cept the discovery monument on top of this hog back.

Cross-examination.

Q. How did you happen to be up there?

A. On October 9th?

Q. Yes?

A. I went over that ground by request of Mr. Golden, parties looking for monuments—locations.

Q. Who was with you?

A. Nobody with me that day.

Q. Nobody was with you? A. Not that day.

(Testimony of John Salsberry.)

Q. What time were you up there?

A. I started early in the morning.

Q. Up there pretty near all day?

A. No, sir; I hardly ever eat dinner; get up in the morning and I may be gone all day; but I get back to supper, but my best recollection is I came down about one or two o'clock.

Q. And you were around over that ground there all day, that is, all the time you were up there?

A. No, sir, I wasn't around that ground all day; I came down perhaps at one or two o'clock.

Q. All the time you were up there on the mountain you were traveling around on the hog's back and side looking for stakes?

A. Yes, sir; that was my sole object in being up there.

Q. Did you make any locations that day?

A. No, sir.

Q. Who did you see and who was with you?

A. Nobody was with me.

Q. Who did you see?

A. I didn't see anybody on the mountain.

Q. Didn't you see Mr. Ish there, and didn't you and Mr. Ish go over that country?

A. No, sir, I didn't know Mr. Ish at the time.

Q. Supposing Mr. Ish had been up there the 9th of October, and doing the same thing you were, searching for stakes all over the side of that hill, do you think you would have **seen him**?

(Testimony of John Salsberry.)

A. If he had been there in the morning, yes, sir, I would have seen him.

Q. If he had been there up till one or two o'clock would you have seen him?

A. Not after I went over on the other side, no, sir.

Q. Were you up there the next day?

A. No, sir, I was not.

Q. When were you next up there?

A. Well, I was up there in the latter part of November.

Q. You didn't see Mr. Ish there as you went up or came down on October 9th? A. No, sir.

Q. You are sure it was the 9th?

A. I am most positive, sir.

Q. You are pretty good on dates?

A. Well, on those dates, yes, when I recollect making some important location.

Q. Were you making a location that day?

A. I didn't locate any of that ground.

Q. I say were you making a location that day, the 9th day of October, 1901?

A. Well, I didn't make any important location; when you ask me that question I will explain to the Court. I am in the habit of locating sometimes ten or twelve claims a day; yes, I have done it many times; once I stretched the record, and located eighteen, so it is hard for me to remember unless it is some very important one.

Q. Well, did you or did you not locate any that day?

(Testimony of John Salsberry.)

A. Well, I could not say as I did or did not; I would not be positive, because it is a long time between the time I went up an went down.

Q. Tell us what you were up there for?

A. I was up there for the sole reason to go up there and look over this ground by request of Mr. Golden, to see if it was clear, to see about the title.

Q. He told you that he had located a tunnel site?

A. Yes.

Q. Had not the line of that tunnel been laid out?

A. Yes, sir.

Q. Wasn't the line of that tunnel the principal thing that you devoted your attention to?

A. We devoted our attention to 750 feet on the other side, and I came down and reported to Mr. Golden.

Q. Never mind what you reported to Mr. Golden. That tunnel line was marked out?

A. Yes, sir, every three hundred feet there was a marking.

Q. And you followed along that tunnel line, didn't you?

A. Why, kept with it; yes, sir, and I came back also over the hill, on the west, on the tunnel, right on the northwesterly side, and also on the southerly side, towards the town; was on the southwesterly and northwesterly side of Oddie Mountain.

Q. Didn't you say that following up that tunnel line you came on a stake?

A. I said on the hog's back; walking up the hog's

(Testimony of John Salsberry.)

back I saw a number of monuments on top of the hog's back; I saw two there, one was a Dave Lewis Hope, and the other was a monument put up there I guess by the United States, of some survey point.

Q. It was not a location?

A. No, sir, and the Dave Lewis was between the tunnel line and this apex of the mountain.

Q. When had this tunnel location been made; that is, when was the location made, the day before?

A. On October 8th.

Q. On October 8th? A. Yes, sir.

Q. Were you associated in that location?

A. No, sir; my name was not on the location notice.

Q. But was it understood that you were interested, and would be a party in the corporation, and in the development? A. Yes, sir.

Q. That was the understanding? A. Yes, sir.

Q. Who were the others?

A. Mr. Ramsey, Mr. Golden, Mr. Ray and I believe a man named Catton, I never met him.

Q. And yourself? A. Yes, sir.

Q. Anyone else? A. That is all.

Q. Was that what might be termed a jumping location? A. No, sir; Mr. Oddie abandoned it.

Q. Had he actually abandoned it, or had not done his work?

A. Well, he didn't do his work, said he didn't want it any more.

(Testimony of John Salsberry.)

Q. They had made a location there, and the time had expired, and you people put this location on?

A. Yes, but our people saw Mr. Oddie before they put it on.

Q. It was understood, was it? A. Yes.

Q. Are you one of the directors and stockholders in the defendant corporation? A. Yes, sir.

Q. How long have you been such, since its incorporation? Yes, sir.

Q. To what extent are you interested?

A. Oh, between forty and fifty thousand shares.

Q. When did you people first conceive the idea of acquiring this particular tract that is in controversy here?

A. What tract do you mean, the Ivanpah?

Q. What we say is the Dave Lewis Hope and what you say is the Ivanpah?

A. Oh, no; they are entirely two different claims. That plat there would throw anybody off; this notice of the Dave Lewis Hope is away on the mountain. I want to explain to you, it is a different ground altogether; the Ivanpah and Dave Lewis Hope are not one and the same at all.

Q. If the Dave Lewis Hope is a claim 500 feet north 8 degrees west from a point 300 feet north of the North Star present shaft; and a thousand feet south 8 degrees west from that same point, then what would you say as to its being practically the same ground as the other?

A. Let me get that just right. 300 feet 8 degrees north?

(Testimony of John Salsberry.)

Q. North 8 degrees west. Take a point, say 300 feet north, or a little west of north of the present shaft?

A. May I have one of these maps?

(Question withdrawn.)

Q. You know where the North Star shaft is?

A. Yes, sir.

Q. Now take a point, say 8 degrees west of north 300 feet distant from that; have you that fixed in your mind?

A. Yes.

Q. Now take a tract of ground running 500 feet north 8 degrees west from that point, with that fixed, and a thousand feet south 8 degrees east from that point; that is 300 feet on each side; in other words, it is almost north and south; there is a variation of 8 degrees; 8 degrees west of north and 8 degrees east of south, which is pretty near north and south.

A. Why, you might possibly run over a very small corner; southeast corner, you might run over perhaps a quarter of an acre of the Ivanpah.

Q. Am I mistaken in assuming that your shaft is on the Ivanpah claim?

Mr. METSON.—I object to that assumption, and ask if the assumption is correct; also object on the ground it is incompetent and immaterial.

The COURT.—Well, if he is mistaken about it we will see.

A. Well, my assumption is that you are taking the discovery location notice and monument for your point, ain't

(Testimony of John Salsberry.)

you, or have you another discovery point of another location; if you do, explain, and I will know how to go on.

Q. Get out of your mind, if you can, that stake that you discovered up there on the summit of Mount Oddie; now, forget that, will you?

A. I cannot forget that; that is the only one I ever saw.

Q. Just try and forget it?

The COURT.—Leave it out of your mind, you need not forget it.

Q. Not considering that, but supposing that that stake, or that monument was down at a point 300 feet north of the North Star shaft on a course 8 degrees west of north; have you got that point fixed in your mind?

A. Yes; I can see that part way up the hill; just imagine it is there.

Q. Now take a location that would run on that same course north 8 degrees west, and south 8 degrees east, 1500 feet long, 300 feet on each side.

A. Now, this is a supposition.

Mr. METSON.—I object to that remark; it lays our whole shaft with this witness.

The COURT.—Well, take an exception.

Q. Would such a location made from such a point, such a distance and course, cover practically the Ivanpah ground?

A. Well, the supposition is that this monument is 360

(Testimony of John Salsberry.)

feet, 8 degrees west of north, and runs 1500 feet in a northerly direction?

Q. Five hundred feet from that and a thousand feet down to the Mizpah ground; would not that cover practically the Ivanpah ground, the location?

A. Three hundred feet north of the shaft?

Q. Yes?

A. Well, I was taught that bearings and distances give way to fixed points, and I don't know anything about these bearings and distances you are talking about; the fixed point is on top of Oddie Mountain; that is the only one I know anything about; that discovery notice of the Dave Lewis Hope; there is no supposition at all about it; we are not supposing, we are down to facts.

Mr. METSON.—You will have to answer the gentleman's question the best you can.

Q. I want to treat you perfectly fair, and I think you understand our theory of the case, and the testimony that has gone in. Assuming that there was a stake where they place it, which is 300 feet northwest from your shaft; now with that as a starting point, extending 500 feet in the same direction, and a thousand feet southerly, 300 feet on each side of that line, would it practically cover the Ivanpah claim? A. No, sir, it would not.

Q. It would not?

A. No, sir, I did not understand you before.

Q. It would not; well, why not?

A. Why not? Because it is way to this end; it is way

(Testimony of John Salsberry.)

to the southeasterly end, it would take in; it would take in the —well, the southern portion of it. To where you are talking about, it would take the southern portion of the Ivanpah claim.

Q. In what half of the Ivanpah claim is your shaft; is it in the northern half or the southern half?

A. It is in the southern half.

Q. And how far is it, approximately, from the center?

A. About, oh, 450 or 500 feet, I guess, maybe 600.

Q. From the center?

A. To the center of the side lines, I mean.

Q. From the center of the lode line?

A. Well, it is 600 feet, I should think.

Q. Then how far is your shaft from the south end line of the Ivanpah? A. How is that?

Q. How far is the North Star shaft from the south end of the Ivanpah?

Mr. METSON.—I object; we are out of court on that answer.

Mr. GOODWIN.—Of course you are; if the witness understood the answer he has the shaft 600 feet from the lode line.

A. I did not quite grasp that.

Q. Do you know where the south end line of the Ivanpah is? A. Yes, sir.

Q. Do you know what I would call the center line of the claim?

A. Your question before was—I don't want to get

(Testimony of John Salsberry.)

puzzled on anything. I understood you to say, how far was this shaft from the cut that Mr. Ish put in that vein in the center of the claim?

Q. No, that is not what I mean?

A. What is your question?

Q. Let me draw a little diagram here. Taking that the long way of the claim, 1500 feet; when you said center, you meant a line across there; now, is your shaft in the southern or northerly half of the Ivanpah?

A. In the southern half.

Q. Being in the southern half, how far is it south of this center line?

A. Well, perhaps—well, between five and six hundred feet.

Q. You think as far as that?

A. Yes, sir; I do; something like that.

Q. Then if it is five or six hundred feet, starting at a point 300 feet north of there would make the Dave Lewis Hope just 300 feet under one condition, and 200 feet under the other condition, shorter than the Ivanpah, wouldn't it?

A. Two hundred feet, how is that?

Q. If you are south 600 feet; if your shaft is south 600 feet, then if you would take a point for the Dave Lewis Hope 300 feet north of that, that would carry you back to within 300 feet of your center line, wouldn't it?

A. Yes; but the Dave Lewis Hope would be over here.

Q. That is according to your recollection of the stake that was put on Oddie Mountain?

(Testimony of John Salsberry.)

A. Yes, sir; that is the only way I have got to go by; that is the only one I ever saw.

Q. That is the only one you found up there, but I am taking those that are testified to down here. Taking that as the starting point, and running 500 feet, would carry you up practically to within two or three hundred feet of the north end line of the Ivanpah?

A. You misconstrue northerly or westerly for due, it is not; you take northerly and put it due north, and take westerly, and explain it due west, and it is not.

Mr. METSON.—I think you assume in your question that this witness had testified to a stake 300 feet north of where the Dave Lewis cut had been made; I do not think that he said that.

Q. I did not intend any such assumption, and I did not so assume it?

A. No, sir; I did not, but you assumed that.

Q. I did not intend to assume that you had testified that you found a stake?

A. You see about these stakes down here, I know nothing whatever; I seen them putting them up, but didn't take any trouble to go and investigate, because I supposed, or always counted on the title being absolutely perfect; but this monument up here—here is the slope of the mountain, I believe I could draw that; I am no draughtsman, but I believe I could put it thoroughly in your mind by drawing it.

Q. I think I have in my mind what you mean, there is

(Testimony of John Salsberry.)

no question about that; I know the locality that you say you found the stake in all right; but if there should have been a location monument down at the point we claim there was one, and the location run 500 feet north, or northerly, from there, a little west, and a thousand feet southerly from there, a little east, wouldn't it have practically covered the Ivanpah location?

A. No, sir, it would not.

Q. It would have covered the main portion of it, wouldn't it?

A. No, sir, it would not.

Q. Does your location come down to the Mizpah?

A. The Ivanpah?

Q. Yes?

A. Yes, sir.

Q. Under those conditions, would not our location also have come down to the Ivanpah, and trespassed a little?

A. You don't seem to grasp the idea; I would like to make one mark on the blackboard, and you would grasp it in a moment.

Q. I grasp the idea you intend to convey; in other words, you are not trying to answer my hypothetical questions?

A. I am not trying to evade your questions; to give you directions; for instance, one claim is running that way, and your other claim is running that way; do you think this would come over the corner, and take in your whole claim 500 or a thousand feet?

Q. You are answering my question all the time from the assumption there is no other location than the one you have said, no other stake, excepting the one you have

(Testimony of John Salsberry.)

said you found; you are answering my question all the time with that fact fixed in your mind; now, assuming that that is not so, assuming that that location monument was down 300 feet north of the cut, 300 feet north of the North Star shaft, and then running that location from that point north 500 feet, and south a thousand feet, wouldn't it practically cover the Ivanpah?

A. No, sir; it would not, assuming as you say, it would not, no, sir.

Q. Is your shaft on the west or on the east of the center line of the Ivanpah claim? A. How is that?

Q. Is it on the west or east of the center line of the Ivanpah claim; and by the center line I mean the lode line, running from your north end to your south end?

A. Why, it is on the east; it is very near the center.

Q. It is very near the center?

A. Yes, perhaps it is 40 or 50 feet of it.

Q. When did your company first conceive the idea of acquiring the Ivanpah?

A. I don't just recollect the date, because there were other parties more deeply interested than I was, had large interests.

Q. And they made the negotiations, and you simply stood in? A. That is the idea.

Q. Well, do you know whether the Dave Lewis Hope was ever acquired by your company, or whatever right, title or interest Lewis had in it, was acquired by your company? A. No, sir.

(Testimony of John Salsberry.)

Mr. METSON.—I object as not in cross-examination, and immaterial and incompetent.

The COURT.—No, I suppose if the North Star had acquired all the rights, they would not object to your proving it.

Recess until 1:30 P. M.

After Recess.

Cross-examination of Mr. JOHN SALSBERY (Resumed).

Q. Did you see that stake up there after the 9th of October, 1901? A. What stake do you refer to?

Q. The stake that you testified to?

A. The discovery monument of the Dave Lewis Hope mine or claim?

Q. Whatever you see fit to term it; you testified to finding a stake in a monument and a notice up on the summit of Mount Oddie?

A. Yes, sir; I seen it about the 29th of November.

Q. Who was with you at that time?

A. Harry Ramsey.

Q. When did you see it again?

A. Well, I could not recall the date; I was up there with Mr. Harris one time; we went to the apex of the mountain, and I saw it that time.

Q. About when was that?

A. Well, I could not tell you really the year.

(Testimony of John Salsberry.)

Q. Was that before or after you went to San Francisco?

A. That was after I went to San Francisco, I went back.

Q. Was it in 1902?

A. I think it was in 1902.

Q. What time, as near as you can tell?

A. I could not tell you, could not even tell you the month.

Q. Was it in the fall, or in the spring, or summer?

A. I think it was in the spring.

Q. Was it before or after the North Star had started its shaft on the Ivanpah? A. I believe it was after.

Q. How long after? A. Well, I could not say.

Q. You are uncertain?

A. I am uncertain about that; but I tell you I have seen it on different occasions, before and after too, I cannot recollect them.

Q. Do you think you saw it in 1902 any time, before the North Star started to work their shaft?

A. Yes, I do recall an instance now.

Q. When was it?

A. That was the time that Mr. Vaughn was around there; Mr. Vaughn was doing some work for Mr. Porter, and what the nature of the work was I don't know; it was digging and widening out that cut, or something; and I believe that was the time these monuments were supposed to be put up, but I didn't notice them at that time,

(Testimony of John Salsberry.)

and that must have been, perhaps in May, I would not swear to that positively.

Q. Were you up to this monument at that time?

A. Yes, came over the hill, and came down to where Mr. Vaughn was, and stayed with him some time.

Q. Describe the monument to me?

A. On the hill?

Q. Yes, as you saw it then?

A. Well, it was built out of rock, and was about two feet high, I should judge, maybe a little higher, and perhaps two and a half or three feet around the base, and in this rock pile was a post, I presume that was 4 by 4 or 3 by 4, or something of that kind, and there was a notice there; I also noticed to see if there was any more dates changed, or any more finger marks on them, I always watch those things, and the date was there just the same as last time.

Q. Anything else that you noticed?

A. It seems to me there was another notice on there partly torn off; now, I understood what that was, you know, but I never read it.

Q. You could not say what it was?

A. I only know around town what it was, I heard what it was.

Q. Whereabouts was the cut that you have heard testified to here, with reference to the North Star shaft?

A. Well, it was very close to the North Star shaft, it was a little northwest.

Q. A little northwest?

(Testimony of John Salsberry.)

A. Or west, I would not be positive as to the direction; it is between a north and west direction, somewhere there, northwest.

Q. With reference to being up or down hill, is it up or down hill from the North Star shaft?

A. Pretty much on a level with the North Star shaft; it is a little up of the North Star shaft.

Q. When did you see that cut last?

A. I have seen it so many times I could not tell; I know where it is, it is covered up partly; we have a magazine there.

Q. Have you seen it lately?

A. Not very lately, no.

Q. Have you seen it since this suit was commenced?

A. No, sir, I have not been up on the hill since this suit was begun.

Q. Have you seen it since May, 1902?

A. When was this suit begun; I thought you had reference to the time we were subpoenaed.

Q. I think in December, 1903, the complaint was filed, and the suit was commenced; and that is what I mean, the date of the commencement of the suit?

A. I have been up there several times since then, and down the shaft and all around.

Q. Have you seen the cut since then?

A. Well, there has been three or four cuts excavated there, quite a little work done lately by our managers, and dumps filled in there and leveled off and excavated some for a powder magazine; I could not swear positively

(Testimony of John Salsberry.)

that I did see it in the last three or four months; there has been a general displacement there; there has been a large hole sunk there, and a whole lot of dirt come out, and we had to have room for it.

Q. The cut you refer to is not covered up by the dump of the North Star?

A. It is partly covered up, yes, sir.

Redirect Examination.

Q. After the North Star moved their shaft up there, was that cut changed about and enlarged or excavated differently, so as to make a powder magazine, or anything of that kind?

A. I believe it was; they stored powder in it; I believe was sunk some, and kept the powder in there.

Q. (Mr. GOODWIN.) Was there a little shaft in there?

A. No, sir; I never noticed any shaft there.

Q. That was not the cut, then, in which there was a shaft?

A. No, sir; only this excavating that cut into the hill.

Q. And there was no shaft from the level or bottom of that? A. No, sir.

Q. Did you ever see a cut there run into the hill with a shaft sunk from the bottom seven or eight feet, a shaft 5 by 8 in the clear, in the neighborhood of 7 or 8 feet deep?

A. No; I cannot recall it if there was.

(Testimony of John Salsberry.)

Q. You cannot recall it?

A. No, sir; I told you there was quite a bit of work done there; that was excavating for all kinds of buildings, and a little of everything around there, storing oil and powder, and putting in pipe.

(By Mr. METSON.)

You say upon the hill, above where this cut was excavated, that Mr. McCune talked about, that you saw another notice partially torn off; describe to the court what that notice looked like?

A. Well, it was a sheet of paper nailed up there; of course, I will have to presume this, it was an attachment, I suppose.

The COURT.—I suggest that what the witness heard or what he supposed it was, is not relevant; we want to get at whether he knows what it was, and if so, what it was.

Q. I want to know if he read part of it, and if so, if he can tell what it was; and how it was fastened on there.

A. I didn't read it; in fact, we always considered that a joke; yes, we laughed about it a great deal, how Davis got his money out of it.

Q. Just tell what you saw; describe the paper?

A. Well, it was nailed on there; I didn't pay much attention to that part of it.

Q. Describe it as near as you can?

A. I think it was a square sheet of foolscap paper,

(Testimony of John Salsberry.)

perhaps, and it was partly torn off, just a few remnants left there; I could not swear to the fact.

Q. Fastened how, or onto what?

A. I think it was nailed onto this 4 by 4.

Q. What 4 by 4?

A. Dave Lewis Hope monument, discovery monument, was up on top of the apex, or near the apex, of Oddie Mountain.

Q. Counsel has questioned you this morning on an assumption; now, Mr. Salsberry, you say that you went over the line of the tunnel, what tunnel, the North Star tunnel? A. North Star tunnel.

Q. And did you testify that the North Star tunnel was west or east of the monument that you say had the Dave Lewis Hope notice in?

A. No, sir; I didn't testify to it; it lies west, the tunnel lies west of the Dave Lewis Hope monument, discovery monument.

Q. About how far west?

A. I think it is 300 feet, about.

Q. Do you know the line of the tunnel, do you know the course of it? A. Well, very nearly.

Q. What is the course?

A. Why, it is a little, I think it is a little east of north, and south of west, I believe.

Q. Now, Mr. Salsberry, assuming that this monument that you found the notice of location of the Dave Lewis Hope claim in to be the location monument, and

(Testimony of John Salsberry.)

assuming the course mentioned in the notice, will or will not the location that you would lay out in your mind from that notice and from that monument, conflict with the Ivanpah, as you knew it?

A. Well, I think it would take a little of the southeast corner, a very little of it.

Q. The southeast corner of the Ivanpah?

A. Yes, sir.

Q. Assuming that to be the location point of the Dave Lewis Hope, I mean this monument where this notice of location of the Dave Lewis Hope claim was seen by you; and laying out the location according to that notice on the ground, would or would not the cut that was testified to by Mr. McCune be within or without the side lines of that location as laid out?

A. Would it be outside of the lines of the Dave Lewis Hope, do you mean, the Dave Lewis Hope claim; would this cut that McCune excavated be in or out of the Dave Lewis Hope?

Q. I mean the Dave Lewis Hope?

A. It would be outside.

Q. Taking the same assumption, that is this same location where you found this notice of location of the Dave Lewis Hope, and lay that out from that monument, as the location monument of the Dave Lewis Hope claim, would or would not the work done by Mr. Ray or Mr. Ish on the Ivanpah, be within or without

(Testimony of John Salsberry.)

the side lines, or all the lines of the Dave Lewis Hope, as laid out in that manner?

A. Would the Ish work be outside of the Dave Lewis Hope claim; that is the way I understand it?

Q. Yes?

A. Yes, sir, it would, and quite a few feet; that would be allowing 300 feet on either side of the Dave Lewis monument.

Q. That is what I mean?

A. Well, it is fully 450 feet from the cut to their monument.

Q. That is the cut made by Mr. Ray?

A. Yes, sir.

Recross-examination.

Q. Why did you consider that fragment that you found up there on the post a joke?

A. Well, I can explain it to you if you wish. Davis and Lothrop, they didn't know anything about the locations up there, or anything of the kind, and I presume they heard there was a deal on there, and oftentimes in a stock camp you know—

Q. Heard there was a deal on hand?

A. Yes; and oftentimes in a stock camp, where there is a great deal of stock sold, lots of little things goes on, and we hear and don't mention, and don't say anything about it; they got in and put that attachment on, and as we term it, a would-be sucker came along, and paid the Carr bill to Davis and Lothrop, and it

(Testimony of John Salsberry.)

was quite a joke the way he got in, he was very smooth about getting in.

Q. You thought it was a smooth job, did you?

A. I think somebody got taken in; it was passed around the town.

Q. You ain't sure yet who it was, are you?

A. No, I ain't sure, I am pretty positive, though, in my own mind.

Mr. URI B. CURTIS, a witness called and sworn on behalf of defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Where do you reside? A. Tonopah.

Q. How long have you resided in Tonopah?

A. I went there the 30th of September, 1901.

Q. What has been your business? A. Mining.

Q. In what respects, what character?

A. Buying and developing properties, general mining.

Q. Do you prospect, and polish the head of a drill?

A. No, I never have.

Q. You are not an expert in that line?

A. No.

Q. Are you interested in the water?

A. Yes.

Q. In the water supply for the town of Tonopah?

A. Yes.

(Testimony of Uri B. Curtis.)

Q. Are you interested in any other place in that vicinity? A. In the way of mines around there?

Q. Yes? A. Yes.

Q. Where?

A. Interested in the Fraction, which is the property I first developed there; the Belmont Tonopah, and several others, in a small way.

Q. Outside of Tonopah have you any interest?

A. Yes, Goldfield, Ray, Lone Mountain.

Q. Since you went there in 1901, you have been more or less interested in different mining properties there, and in the development of the town of Tonopah, and Goldfield? A. Yes.

Q. Are you familiar with the mountain called Mount Oddie? A. Yes, in a general way.

Q. Do you know any mines or locations called the Silver State or Mizpah? A. Yes.

Q. The Valley View and Lucky Jim?

A. Yes.

Q. Since when have you known them?

A. Well, those are claims that I knew right from the first, when I first went there; that is, the second time I went there; the first time I went, in September, I was only there two or three days; then I went out in October, and back in November, then I spent about two weeks there, and investigated into the camp in general.

Q. Were the locations mentioned well known to the majority of the people there in Tonopah, or little known?

(Testimony of Uri B. Curtis.)

A. Those claims I mentioned are very well known; in fact, they are quite important claims in the camp.

Q. Do you know Charles J. Carr?

A. Only to meet him; never have known him, what you term know him.

Q. You knew him in Tonopah, and saw him there?

A. Yes.

Q. You knew who he was there? A. Yes.

Q. You are familiar with Mount Oddie?

A. In a general way, yes.

Q. State, if you remember, of being on Mount Oddie in company with anybody in this courtroom?

A. Well, I was up on Mount Oddie about the first time I was around the town very much with Mr. Ramsey and Mr. Salsberry; I was becoming interested; in fact, I went back to Tonopah to see if I could get hold of property.

Q. This time that you went up there was about what day?

A. About the 5th, 6th or 7th of December, 1901, somewheres in there.

Q. I attract your attention to what is now known as the North Star main shaft. Do you know where that is? A. Yes.

Q. Do you know where the plant and hoist is there?

A. I am very familiar with it.

Q. Attracting your attention now to a radius of a couple of hundred feet from that shaft, were you or were you not at that place on or about November, 1901?

(Testimony of Uri B. Curtis.)

A. I was within, I should say, a very few, a couple of hundred feet, anyway, from right where the shaft is located now, the North Star shaft.

Q. Were you there in the daytime or night-time?

A. Yes, in the daytime.

Q. State whether or not there was any cut or excavation within the radius of say 200 feet from where that shaft is, at that time?

A. I did not see any.

Q. Attracting your attention to an excavation, that would be, say four or five feet deep, two or three feet wide, and six or eight feet long, or larger, was there or was there not any such excavation there at that time?

A. No, sir.

Q. State whether or not you know the general reputation of Charles J. Carr in the community in which he lived for truth, honesty and integrity; answer it yes or no?

Mr. GOODWIN.—I object to that on the ground the proper foundation has not been laid.

The COURT.—I suppose you could raise the question of the character of a witness, without laying any ground for it. I will allow the question.

(Plaintiffs except.)

A. In a general way.

Q. State whether it was good or bad.

A. Why, it was bad, from what I generally knew; my general impression.

(Testimony of Uri B. Curtis.)

Cross-examination.

Q. Did you ever have any dealings with Mr. Carr, Mr. Curtis? A. No, sir.

Q. Now, what did you ever hear said about Mr. Carr, other than that he was a drinking man?

A. Well, they said about selling claims, that he didn't seem to have—selling them two or three times; selling town lots two or three times.

Q. Now, as a matter of fact—

Mr. METSON.—Let him answer the question you asked.

A. I say that is what I heard. I didn't know it of my own knowledge, anything that I was interested in.

The COURT.—It is the general reputation in the community, not your own knowledge.

A. That is what I heard about him, that he sold claims two or three times over, and town lots two or three times over.

Q. Anything else?

A. Why, no; only just rumors of that kind, you know.

Q. Don't you know that Mr. Carr was one of the early men on the ground there? A. Yes.

Q. That he located and had at one time title to some of the best ground that there is there to-day, some of the really good ground?

A. Yes, I understood that.

Q. Don't you know that just through his good heart,

(Testimony of Uri B. Curtis.)

in one way and another, he has just been wheedled out of all those interests, until there is nothing left?

A. He undoubtedly sold them.

Q. Didn't he give a whole lot of them away?

A. I have understood that.

Q. Don't you know that he gave away a lot of those town lots there to Tom, Dick and Harry?

A. I have understood that.

Q. Don't you know that he gave interests in those locations that he made to different people?

A. I am not familiar as to that.

Q. Now, you never heard anything about Mr. Carr excepting some person that was kicking because some complication of title had arisen over some town lot that he had either given them or sold to them there, did you?

A. Well, that is the way it was generally, sold two or three times; that was what I heard, that he had sold lots two or three times.

Q. Don't you know that there was a scramble for the possession of those lots there in those early days?

A. That was before my time; things were pretty well settled when I got there; those early stories you hear, and go along, and they are good and bad.

Q. Did you ever hear any one say that Mr. Carr was dishonest or would lie?

A. Well, I could not say who said it, but that was the general impression, that he did not stick to the truth always.

Mr. T. L. ODDIE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. State your name, please?

A. Tasker L. Oddie.

Q. What is your employment?

A. I am employed by the Tonopah Mining Company, and several other companies, in the town of Tonopah.

Q. What is your residence? A. Tonopah.

Q. How long have you been a resident of Tonopah?

A. Since October, 1900.

Q. What is the character of your employment?

A. I have had charge of the main companies there, several of the main companies.

Q. You are familiar with the Mizpah location?

A. Yes.

Q. In Tonopah? A. Yes.

Q. Is or is it not a well known location, and its situs well known?

A. Well, I consider it the best known of any in that district.

Q. To whom is it the best known or well known?

A. I think everybody in the district, because that was the main point of attraction to every one who came into that part of the country at that time.

Q. You know a knoll there called Mount Oddie?

A. Yes.

Q. And I suppose you have been familiar with that mountain, more or less? A. Yes.

(Testimony of T. L. Oddie.)

Q. I will show you a photograph which has been marked Complainant's Exhibit 3, and will ask you to look at that, and see if you can identify any buildings thereon?

A. Yes; the company house and the company office, both of which I have occupied. I occupied the company house until six months ago, and the office from the time of its completion.

Q. Do you know when you first went into the company house? A. Some time in June, 1902.

Q. What locations up there in that vicinity did you have charge of, if any, in 1901 and 1902, the fall of 1901?

A. I had charge of the Butler group, which consisted of the Mizpah, the Silver Top and the Desert Queen, which are up in this end of the group, the east end.

Q. You have heard some of the testimony here; do you know the cut that Mr. McCune testified to, do you remember that? A. Yes.

Q. State whether or not there was any cut in the vicinity of what is now known as the North Star main shaft, prior to January of the year 1902?

A. Well, I can speak up to the time of December 13th. I know there was none up to that time. I left for the east on that day.

Q. You returned from the east when?

A. December, 1901, I should say, and I returned some time about the middle of January, 1902.

(Testimony of T. L. Oddie.)

Q. Do you know whether or not that cut had been created by that time?

A. I didn't see it until some time after that.

Q. It was in plain view, was it or not, from the town, from the postoffice and Davis & Lothrop's and Wells, Fargo & Company's office, and the company's office?

A. Yes; right up on the side of the mountain.

Q. During the fall of 1901, were you or were you not up on the hill between the residence and the building at the left-hand side of the photograph daily when you were in town?

A. Yes. I cannot say that I went over that particular piece daily, but I have walked all around there daily; it is my business to be there every day.

Q. State whether or not in the year 1901 any monuments were erected marking, or which marked the Dave Lewis Hope location in that vicinity, to your knowledge?

A. I never saw any of the Dave Lewis Hope monuments at all.

Q. State whether or not you were interested in monuments on or about this ground, and whether or not you were watching for monuments and the monuments that were on the ground during that time?

A. Yes; shall I explain why?

Q. Yes, explain.

A. Because I located with two friends of mine a tunnel site on the north side of the mountain in the spring of 1901; and we abandoned that tunnel; we found the

(Testimony of T. L. Oddie.)

G. & H. tunnel had started, and Mr. Brougher and myself each bought an interest in the G. & H. tunnel, and we located that 3,000 feet in length, and the location, the certificate, or whatever it was, claimed 750 feet on each side of that tunnel line, and we were always under the impression that we could hold all of the ground inside of those lines, and we were pretty anxious to watch it, because I know at one time some men in Tonopah made a location east of the Mizpah, and we told them flatly that they conflicted with that tunnel right, and they took the monument down; the Phebe brothers did that; and we were continually watching the ground. Gordon, Hudgens and Manning were the other three owners besides Mr. Brougher and myself; and up to the time the Ivanpah claim was brought to my notice, I never knew of any claims covering that ground, because we always believed we were entitled to that ground.

Q. Do you know Charles J. Carr? A. Yes.

Q. Did you know him when he lived in Tonopah?

A. Yes.

Q. State whether or not you knew the general reputation for truth, honesty and integrity of Charles J. Carr in the community in which he lived; answer yes or no?

A. Well, I know when he lived there his reputation was not good.

The COURT.—He wants to know if you know what his reputation was; that would be yes or no.

A. Simply for hearsay.

(Testimony of T. L. Oddie.)

Q. State whether his reputation in the community in which he lived was good or bad for truth, honesty and integrity? A. It was bad.

Cross-examination.

Q. Bad in what way?

A. The reports that came to me about certain things that he had done.

Q. What was claimed that he had done?

A. Well, the same thing that Mr. Curtis said, selling lots to several different people; I know that he tried to sell a lot of mine, the one that I afterwards sold to Frank Golden.

Q. Did he have a location covering that lot?

A. In that particular case, he claimed that his location had covered one end of it, or he thought it did.

Q. He thought that his location covered your lot?

A. He may have thought that.

Q. Don't you know, as a matter of fact, that he honestly believed that he had an interest in that lot?

A. I never knew that, because at that time a number of people told me he had sold the same lot to several different people.

Q. Did you ever hear of his attempting to sell a lot that was not included within what he understood to be his location of the townsite there?

A. Well, I cannot say as to any particular lot that he tried to sell; I am simply saying what was his reputation, and what was the common talk around town at that time, as to lots in general.

(Testimony of T. L. Oddie.)

Q. He at one time owned, or had a location, on the major part of the town, did he not?

A. He had an interest in the West End claim, which took in part of the town.

Q. Didn't you know of his giving away a lot of lots there?

A. I know that he did give away lots.

Q. Don't you know that these conflicts that arose, arose principally between people that claimed he had given a lot to them before he had given it to the other fellow?

A. I don't know that.

Q. Did you ever know of his making a conveyance of a lot, and taking the money, and then turning around and selling, or attempting to sell that same lot to somebody else?

A. Simply from what had been told me; that had been told to me by a number of people, that he had done that.

Q. What besides the Golden lot did you ever hear of his doing?

A. I don't know what lots they are; I have heard people talking about them, I don't know the particular lots.

Q. Is not that all you have ever heard against Charles Carr, except that he would get drunk?

A. There were a good many ugly reports around town about him, before he left and after he had left.

Q. In what way?

(Testimony of T. L. Oddie.)

A. Well, that he didn't—a good many different things; that he had gotten money in certain ways that people criticised.

Q. In what way?

A. Well, I know one thing, if you want me to say it; I was district attorney at that time, and a certain man that is there now came to me and told me that Carr when he was under the influence of liquor, had signed a name to a check which he should not have signed.

Q. Was he drunk at the time?

A. That is what he told me.

Q. Did you ever know or hear of Charles Carr doing anybody a wrong, or saying anything to injure any person when he was himself?

A. He never did to me.

Q. Did you ever hear that he did to any one?

A. No, I cannot say that.

Q. Isn't he the kind of a man, you know and realize and recognize as being one of those unfortunates, who was at that time his own worst enemy?

A. I felt that way, that Mr. Carr gave away a great deal.

Q. Didn't he give away enough, if he had held it that to-day he would have been worth millions of dollars?

A. Either gave it away or sold it.

Q. Don't you know that he gave enough away that if he had held it he would have been worth millions of dollars to-day; don't you believe that?

A. I believe he gave away enough to make him very rich.

(Testimony of T. L. Oddie.)

Q. A very rich man? A. Yes.

Q. And don't you know that when he had money there, and was working that lease, that his hand was always in his pocket to help anybody in distress?

A. I know he was very liberal.

Q. And wasn't he very kind and considerate whenever he was himself?

A. As far as I ever saw he was that way; as far as my personal dealings with him are concerned, I had business dealings with him, but all my business dealings were in black and white; I used to transact his business as I did other leasers, and the books showed them everything; everything was in black and white.

Q. There never was any attempt or effort on his part to beat or gouge you, or anything, on his part?

A. No, not with me, personally.

Q. Have you heard any more about Charles Carr than you have heard about other men in the community there, Mr. Oddie, that stand pretty high and have a good deal of money?

A. Yes, sir; because there was a strong feeling against Mr. Carr at that time on account of certain things that people said had happened.

Q. With reference to these lots?

A. No; other things; with reference to lots in a certain way; that is, lots came into this thing you are speaking of.

Q. I want to get at the facts?

A. I will tell you the report that went around town:

(Testimony of T. L. Oddie.)

That he and certain other men tried to burn a building for the sake of pilfer, and it made the town wild, because people had all the money they had invested right in the buildings there in town.

Q. Did you ever inquire into the facts to find out whether there was any foundation in fact in that?

A. No, I never did.

Q. Don't you know in a little community like that there are a great many things said and reported, and a good deal of common gossip, that has no foundation in fact in it?

A. That is always the case in a small town.

Q. And particularly so if a man drinks or gets down on his uppers, and walks out of the place, like Charlie Carr did there?

A. It is human nature in every town that I have ever seen to spread reports.

Q. And kick a dog that is down?

A. I don't think necessarily.

Q. Is not that human nature?

A. Well, human nature is human nature; I don't know whether one place is any different from another in that way.

Q. You say in 1901 you were watching this ground very carefully to see as to stakes? A. Yes.

Q. Because of your tunnel location?

A. I would not say as much stakes as locations, and locations mean stakes.

Q. That covered what period of time?

(Testimony of T. L. Oddie.)

A. That covered, oh, for a long time after that.

Q. Took it through the fall of 1901 did it, covered that period of time? A. Yes.

Q. During 1902, did it cover that period of time?

A. Yes, it covered all the time up to the present day.

Q. Up to the present day? A. Yes.

Q. Did you examine along in where the present North Star shaft is, did you watch that country in through there?

A. I didn't watch that particular spot; I watched all the side of the hill, and used to go over it frequently.

Q. In other words, you kept a general supervision over that section of country?

A. Yes, myself and my partners.

Q. You found those Ivanpah corners and stakes as soon as they were set up?

A. I didn't look particularly at them, because my partners told me they had been set up afterwards.

Q. When did they tell you that?

A. Some time before June, 1902, because at that time we made a transfer of some of the rights.

Q. Didn't they tell you that the Mizpah Intersection or Dave Lewis Hope corners were set up?

A. I never knew a thing about that; they didn't tell me a thing about it, they may have known it, but they didn't tell me a thing about it until some time after this question came up.

Q. You don't mean to say that as you gathered the

(Testimony of T. L. Oddie.)

facts since, that these stakes were not set up at that time?

A. I cannot say there were no stakes set up in particular places; I do know some of the ground so well that I know that.

Q. Don't you know that at least as early as May, that those stakes were up?

A. No, I do not; the Dave Lewis Hope stakes, you mean?

Q. Yes

A. No, I do not, because I never had seen them; it was some time after that that my attention was drawn to the fact that there was a claim called the Dave Lewis Hope.

Q. About May, didn't you know the Dave Lewis Hope claim?

A. I don't remember anything about it at that time; I heard the name simply, Dave Lewis Hope claim, some time after January, when I came back, of 1902, I don't recollect just what time.

Q. Now, Mr. Oddie, do you recollect consulting Mr. Jackson with reference to the Dave Lewis Hope, and Mr. Jackson advising you that the Dave Lewis Hope location was good, and advised you not to fight it?

A. I remember getting a letter from Doctor Porter, I think, about the Dave Lewis Hope, and I remember consulting lawyers about their claim.

Q. Didn't you consult Mr. Jackson about the Dave

(Testimony of T. L. Oddie.)

Lewis Hope, and didn't Mr. Jackson advise you the location was good, and not to fight it?

A. I did; but I don't remember just when it was; that was after it was brought to my knowledge.

Q. Afterwards didn't you meet Doctor Porter at Tonopah, and discuss the Dave Lewis Hope claim with him?

A. Well, I discussed it when he came there; I don't remember just when it was.

Q. The testimony is that Doctor Porter got there about the 24th of April, 1902, and he left some time about the 1st of July; during that period of time you met Mr. Porter?

A. I met him when he came in there.

Q. Prior to that time, don't you recollect that you had consulted with Mr. Jackson, the attorney, with reference to the Dave Lewis Hope, and that he had advised you that the location was good?

A. No, sir; I don't remember consulting him before that at all.

Q. About that time?

A. I don't think it was at that time; I think it was some time afterward, if my recollection is correct; I know it was.

Q. Do you recollect when Doctor Porter was there talking with you about the Dave Lewis Hope, and you advising Doctor Porter to prepare a notice of trespass, he representing to you that they had started a shaft up there?

A. I don't recollect that, no.

(Testimony of T. L. Oddie.)

Q. Think it over carefully, Mr. Oddie. Don't you recollect having a talk with Doctor Porter in which the question of serving a notice, I think, came up, and you discussed the matter with him, and concluded it would be a good plan, and Mr. Jackson was called on, or Doctor Porter went to Mr. Jackson, and Mr. Jackson prepared the notice?

A. I don't remember anything about that; I remember talking to Mr. Jackson about the Ivanpah later, and I remember the Dave Lewis Hope claim came up in my mind some time after that, and I remember when Doctor Porter came in, and I remember that he spoke to me about the claim, but I don't know what it was.

Q. He had quite a talk with you, didn't he?

A. Yes, he had quite a talk with me about some other proposition first; I don't think this was brought up until some time afterward; I know it was never clear in my mind until after I get a letter from Doctor Porter, quite a long time afterwards, and I don't think that I replied to the letter, because I didn't consider there was any basis for it at all.

Q. If what I have said has refreshed your memory, see if you cannot recollect something about that conversation, if you had such a conversation relative to this trespass notice?

A. I don't remember a thing about that; it has slipped my mind if I ever had it; I don't think I did, because I don't see what object I would have if it is inside of our ground, inside of our lines that we claim.

(Testimony of T. L. Oddie.)

Q. Didn't you look up the Dave Lewis Hope claim while you thought you had that tunnel location?

A. No, sir.

Q. Was there a period of time that you were thinking about fighting for that ground?

A. Well, there was a period of time when we didn't know what the rights of that ground were, as between that ground and the Ivanpah, but that is the only claim that I thought conflicted.

Q. Didn't you hear of the Dave Lewis Hope as soon, or sooner than you heard of the Ivanpah?

A. No, sir.

Q. Where did you first hear of the Ivanpah?

A. I heard of that through my partners; it was some time before June, I cannot tell the date.

Q. Some time before June?

A. Yes, it was some time before that, because Mr. Brock from Philadelphia came out, and Mr. Brougher, and I went to him and persuaded him to take the controlling interest in the G. & H. tunnel; we explained to him that there was no conflict north of the Silver State, except the North Star tunnel and the Ivanpah claim; I told him the rights had not been determined as between those two properties, and he would have to take it with his eyes open; I said nothing about the Dave Lewis Hope, because I never knew it had any bearing on that proposition.

Q. At that time you knew of this work that had been done up there?

(Testimony of T. L. Oddie.)

A. I knew that Mr. Ish had done some work.

Q. Didn't you also know that somebody had run this cut where the present North Star shaft is?

A. I knew there was a cut there.

Q. Didn't you know who had been running it?

A. I supposed Mr. Ish had done it.

Q. But, as a matter of fact, didn't you inquire?

A. No, I did not; my partners told me this work was being done by the Ivanpah people.

Q. Afterwards, didn't you know of Doctor Porter coming there on the ground and doing some considerable work?

A. Yes, after that, I knew all about Doctor Porter's coming there.

Q. You knew all about the Dave Lewis Hope, then?

A. Knew all about it then; yes; because I had a letter from Doctor Porter.

Q. You had a letter from Doctor Porter prior to his coming there, did you?

A. Yes, that is my recollection; I think it was from Doctor Porter, or somebody interested in that claim.

Q. Are you a stockholder in the defendant corporation?

A. No, sir; I have not a share.

Q. You have no interest in it? A. No.

Redirect Examination.

Q. Mr. Oddie, how many fires in Tonopah did you hear connected with Mr. Carr, or suspicion, talked about with reference to Mr. Carr, if any?

(Testimony of T. L. Oddie.)

Mr. GOODWIN.—I object to that.

The COURT.—As to the number, the fact that he was connected with it, you might answer in connection to that, but it is not the number. You may ask the question; anything of that sort, there is liberality to both sides.

A. Well, I know of one that the officers told me of.

Q. Did you hear anything, any talk about Mr. Carr selling some claim more than once to different people?

A. No, not mining claims, except lots; he had a little trouble in the lease that he had first with one of his partners, but I don't know how that was settled.

Q. Did you hear any talk about a location called the Midway?

A. Yes; well, I simply knew of the Midway.

Q. You just knew of the Midway?

A. Yes, I knew all about the Midway location.

Q. Did you hear any talk with reference to Mr. Carr and the Midway? A. No.

Q. Did you hear any talk with reference to lots being disposed of at least three times to different persons by Mr. Carr?

A. Yes, those are the lots in town.

Q. Sold, or given away, or what; what did you hear?

A. I heard that he sold them to several different people.

Q. Did you hear anything about any hold-ups in Tonopah?

A. No, not in relation to Mr. Carr.

(Testimony of T. L. Oddie.)

Q. Do you remember the time the town was disinfected over there? A. Yes.

Q. Was that in 1901 or 1902?

A. That was in 1902.

Q. Did you have any business dealings or seek any whatever from Judge Jackson until after 1902, the first of January?

A. I didn't think I ever saw Judge Jackson until some time after that, I don't remember just how long it was.

Q. I want to get at about what time you first saw Mr. Jackson, if you remember?

A. I remember it was some time before June, 1902, but I cannot recollect when he came, some time in the spring.

Q. Mr. Jackson didn't go out to that country until you had gone East in December did he?

A. No, not until some time after that.

Mr. T. M. McCABE, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. What is your business? A. Miner.

Q. How long have you been a miner?

A. About 20 years.

Q. Where were you born? A. Virginia City.

Q. Have you ever resided in Tonopah?

A. Yes, sir.

(Testimony of T. M. McCabe.)

Q. When did you go to Tonopah first?

A. I think it was October 25th, 1901.

Q. Have you ever held any official position in this state, Mr. McCabe? A. Yes, assemblyman.

Q. From what county? A. Nye County.

Q. What year? A. 1903.

Q. Are you acquainted with Mr. Charles Carr?

A. Only by reputation.

Q. Did you ever see him in Tonopah?

A. Yes, sir.

Q. Do you know what reputation Mr. Carr bore in the community in which he lived, in Tonopah, as to integrity, honesty and veracity; you may answer that yes or no, if you knew his general reputation?

A. Well, it was bad.

Cross-examination.

Q. Why do you say it was bad?

A. Well, from what I heard from the general public.

Q. What did you hear them say?

A. Well, I heard that his reputation was bad.

Q. Well, what did you hear them say?

A. I heard them say lots of things; I can't remember at the present time.

Q. Well, what were they?

A. I heard one time they were going to run him out for trying to set the town on fire.

Q. Who was going to run him out?

A. Well, the general public.

(Testimony of T. M. McCabe.)

Q. Were you one of them? A. No, sir.

Q. Were you there? A. Yes sir.

Q. What else did you hear?

A. I heard that he sold lots there, sold them a couple of times.

Q. What else did you hear?

A. Well, several things, but I don't remember the other things that I heard right now.

Q. Did they subpoena you here?

A. Just about an hour ago.

Q. Did they send down to Tonopah to have you come here? A. No, sir.

Q. Just happened to catch you in town?

A. Yes, sir.

Q. Did you hear of anybody else down in Tonopah that sold lots or claims more than once?

A. I believe I have, yes.

Q. There was a good deal of trouble there with titles for a while, wasn't there? A. Yes.

Q. And every fellow that got into trouble blamed the man that he got the title, or supposed title, from, didn't he? A. Yes, sir.

Q. Did you know Charlie Carr during the time he was residing there in Tonopah?

A. Only by reputation; knew the gentleman to see him on the street.

Q. How long were you in Tonopah?

A. I went there the 25th of October, 1901.

(Testimony of T. M. McCabe.)

Q. And have been there ever since; that is, it has been your residence ever since? A. Yes, sir.

Q. What is your business there? A. A miner.

Q. And you were not acquainted with Mr. Carr during that time, personally?

A. Just as I told you, I saw him on the street, and by general reputation.

Q. There were some pretty bad men in there at that time, were there not? A. Yes, sir.

Q. Men, with pretty hard reputations, weren't there?

A. Yes, sir.

Q. And his was a little worse than any of the balance, was it?

A. Well, his reputation was bad.

Q. His reputation was bad?

A. That is, from what I could hear.

Q. Did you ever know of his doing anything there except drinking too much whisky for his own good once in a while? A. Well, no, sir.

Q. Did you hear of his doing a great many kind and good things? A. No, sir, I never did.

Q. You never heard of his giving lots there to a number of people, and things of that sort? A. No, sir.

Q. You never did? A. No, sir.

Q. You never heard of his giving his money right and left there for all charitable purposes whenever he had it?

A. I heard he was charitable, I heard that.

(Testimony of T. M. McCabe.)

Q. Didn't you always hear he was mighty kind-hearted? A. I have heard that too.

Q. Don't you believe he is the kind of man that would have to know a man was pretty bad before he would go on the stand and testify that his reputation was bad? A. Yes.

Q. Don't you know he is the kind of man that would not do a man an injustice unless he was absolutely certain of the ground that he stood on?

A. I don't know that.

Q. Don't you know that?

A. Well, I will tell you what I do know; I was in Mr. Stinson's store one evening and Mr. Carr came in there and stole a hat.

Q. Did you see him steal it?

A. Yes; I was right there, and I saw Mr. Stinson take the hat away from him.

Q. Did you report it?

A. Mr. Stinson was right there.

Q. Now, what did he do; Stinson was right there, and Stinson got the hat; Carr didn't steal the hat, did he?

A. His intentions was all right, he had the hat under his coat at the time, although Carr was drunk at the time.

Q. He was drinking, was he?

A. Well, he was drunk.

Q. Now, when did you first hear that Mr. Carr was such a bad man?

A. Shortly after I arrived in Tonopah.

(Testimony of T. M. McCabe.)

Q. Did you hear he was a very bad man when he had that lease there and was making money?

A. No, sir; I never heard anything.

Q. He was a good man as long as he had that lease and was making money; as long as he had money he was a pretty good fellow wasn't he? As long as he had that lease, and properties, and as long as he had the townsite, and was giving away town lots, and as long as he was making money, he was a pretty good fellow, wasn't he?

A. Yes, sir.

Q. Wasn't he considered one of the prominent men in town?

A. Yes, sir; I believe that he was a good charitable man all right.

Q. And don't you believe that to-day?

A. Well, to a certain extent I do.

Q. Do you believe that Charlie Carr would do, intentionally, in his sober moments, any man a wrong?

A. Not in his sober moments, I don't believe that he would.

Q. You don't believe that he would do it, do you?

A. No, sir.

Redirect Examination.

Q. Was he ever sober in Tonopah at all?

A. Yes, I have seen Carr sober there.

Q. How frequently? A. Well, I cannot say.

Q. Well, what would you say of him; did you see him very often?

A. I have seen him on the street occasionally, yes.

(Testimony of T. M. McCabe.)

Q. Now judging from the times you saw him, was he drunk as frequently as he was sober, or more so; just make a comparison?

A. I think it was about a standoff.

Q. And you have not attempted to give your views here respecting Mr. Carr except in answer to counsel; you were asked to state the general reputation in the community; is that what you have endeavored to do?

A. Yes.

Q. And have you tried to state that truthfully, as to what his general reputation was? A. Yes, sir.

Mr. W. J. HARRIS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. Mr. Harris, where do you reside at the present time? A. Reno.

Q. How long have you resided in Reno?

A. Since the last of September.

Q. Where did you reside prior to September?

A. In this state.

Q. Have you ever resided in Tonopah, Nevada?

A. Yes, sir.

Q. When did you first go to Tonopah?

A. The first few days in March, 1902.

Q. What was your business in Tonopah?

A. I was cashier of the only bank there at that time.

Q. What is your business now?

(Testimony of W. J. Harris.)

A. Cashier of one of the banks in Reno, the Farmers' & Merchants' National.

Q. Are you acquainted with Mr. R. B. Davis?

A. Yes, sir.

Q. Were you acquainted with Dave Lewis?

A. Yes, sir; after I became a resident of Tonopah, I didn't know him before.

Q. What were the circumstances of your acquaintance with Dave Lewis?

A. Mr. Lewis was a man with the business of prospector and the bank, the first location of the bank was in Cutting & Edwards store, and Mr. Lewis used to come in there frequently, and he was a man that drank at times, and when my attention was first called to him, one of the clerks in the store was talking to him about, I think, rather joking him about a mining location that he had.

Mr. GOODWIN.—We want to interpose an objection here that any conversation had with Lewis not in the presence of his co-locator, is incompetent, and heresay.

The COURT.—That is the same objection that was made a while ago; I do not want it understood that I am ruling on that proposition, but subject to your objection I will allow the testimony to be taken, and to be considered by the Court if deemed relevant, and if not, it will be excluded.

(Plaintiffs except.)

A. It came to my notice after, that Mr. Lewis

(Testimony of W. J. Harris.)

claimed a piece of ground on Mount Oddie in conflict with the North Star tunnel location, in which I was a part owner. I didn't pay much attention to the conversation there in the store, until I heard it several times, then I began to inquire who this man was and whether he did have any location on Mount Oddie in conflict with this property that I had recently bought an interest in; I found out that a friend of mine, that I had known for twenty years, Mr. R. B. Davis, who was then a merchant there, and is now, I guess, was a particular friend of this man Lewis, in fact, I understood that Lewis rather looked upon him as his particular friend and adviser. I went to Mr. Davis, and called him by his given name, "Dick," I said—

Mr. GOODWIN.—We object to what he said to "Dick" as entirely incompetent.

Q. Well, what did you do with "Dick"?

A. Dick and Mr. Lewis and myself went up on Mount Oddie one Sunday evening, probably five o'clock or four o'clock, I don't know when it was, it was on Sunday, because Sunday was the only time that I went around on the hills at all, for the purpose—

Mr. GOODWIN.—Never mind the purpose, we object to the purpose; state what you did.

The COURT.—Your motive, that would not make any difference; just what occurred, unless they want to call it out on the other side.

(Testimony of W. J. Harris.)

A. We went up along the trail right out from Lothrop & Davis' store, as nearly a short cut as we could find up along the Mizpah, up to where the present North Star shaft is, passing a cut which was testified to as having been done by McCune and Enright, and enlarged by Mr. Porter and somebody else; we passed by that cut, passing along the North Star line to the ridge, and there we found—can I say it was pointed out to me?

Mr. GOODWIN.—Certainly, whatever was done.

A. It was pointed out to me by Mr. Lewis as being their location monument; from there we looked for an excavation of some kind, looking for preliminary work presumed to have been done on the Dave Lewis Hope claim; from there we went—well, we didn't find any; we were pointed out a place where work was done, which proved to be nothing but the monument of one of the tunnel sites, I think it was the G. & H. tunnel; it was a mound of stone and right by the side of it—well, I could see nothing at all before it was pointed out. We asked where the work was done—can I state what Lewis said?

The COURT.—Yes.

Mr. GOODWIN.—Note our exception, please.

A. Mr. Lewis says, "Here in a place"; there hadn't a pick or shovel ever been put in that ground. That was by a stone monument north over the ridge, towards the North Star tunnel site.

(Testimony of W. J. Harris.)

Q. (Mr. METSON.) You mean the opening into the tunnel? A. The opening into the tunnel.

Q. On the north side of the mountain?

A. On the north side of the mountain. From there we passed along until we found the low portion, or off from the mountain entirely, and found the road, struck the road going to town; we came to town and went to Lewis' tent, which was on Main street.

Q. Let me interrupt that proposition there, I am familiar with the testimony. Did Mr. Lewis state that he had this cut dug, that is, the cut near the North Star shaft? A. He did.

Q. Did he state the date that he had it done?

A. He said in February, but he said his time-book would show the exact date.

Q. Well, go on?

A. We went to Mr. Lewis's tent, got the time-book, it was then getting dark and Mr. Lewis lighted his candle and produced the time-book; Mr. Davis took the time-book; the time-book—

Mr. GOODWIN.—I object to that as incompetent; if you have the time-book, produce it.

A. I can say what the time-book stated; I saw the time-book.

Mr. PITTMAN.—I will state at this time, for the benefit of counsel, that that time-book is gone; it was lost, and we have been unable to find it anywhere, which we will make proof of by the next witness, who had it in

(Testimony of W. J. Harris.)

his possession, and this evidence can go in subject to that.

Mr. GOODWIN.—We make our objection, and I understand the court allows it subject to our objection.

The COURT.—Certainly.

A. The time-book contained the names of Enright, the name is A. L. Enright, but I could not say whether that was there or not, Enright and McCune; I asked where the men were and was told, that Enright was tending bar.

Q. (THE COURT.) Who told you?

A. By Lewis; Enright was tending bar across the street in a saloon owned by or run by a young man from Silver City, Bert Allen; I went across the street with Mr. Davis, Mr. Lewis said that he would be there; and I asked Mr. Enright if he did the work up there, and he said, yes; what time, and he said the first of February, seemed to know the exact date; I asked him another question or two and he would not answer, said—

Mr. GOODWIN.—Never mind what he said.

A. The reason he would not answer—

Mr. GOODWIN.—Never mind, you don't know his reason.

A. He stated his reason. We went over and got Lewis and came back, and he answered every question we asked him.

(Testimony of W. J. Harris.)

Q. Where was this location monument situated with reference to the peak or apex of Mount Oddie?

A. Well, it was up very high on the ridge, and I should judge that it was close on to 200 feet, but I have learned since that it was—

Mr. GOODWIN.—State your best judgment.

A. My best judgment is that it was in the neighborhood of 200 feet, or nearer; it was high up apparently. It was going over this from the way we went. It was very high on the ridge.

Q. Was the North Star tunnel line marked out at that time? A. It was.

Q. Which direction from the North Star tunnel line was this monument pointed out by Dave Lewis?

A. Quite a distance east toward the Mizpah Extension.

Q. Could you approximate how far east it was?

A. From the tunnel line?

Q. Yes. What would be your approximate judgment?

A. Well, it was close on to 300 feet; it was over 200 anyhow.

Q. How much higher did you say the top of the mountain was than the monument?

A. Than the Dave Lewis monument?

Q. Yes.

A. Well, as I said, it was fully 200 feet from that monument to the peak, I should judge.

(Testimony of W. J. Harris.)

Q. Did Lewis show you any other monuments represented to be the monuments of the Dave Lewis Hope claim?

A. In pointing out where he did his work, he pointed to the stone monument, which I was satisfied was the G. & H. tunnel monument.

Mr. GOODWIN.—Just state what he did, and not what you are satisfied.

A. He didn't point out any other monument; pointed there where he did his work, preliminary work, "Right there," he said, and kind of moved his hand.

Q. On which side of the mountain was that?

A. On the northern slope, but kind of east of the monument, and down in a sort of a little draw there.

Q. Was it on the opposite side of the mountain from town?

A. The opposite, could not see town; it was clear over the ridge.

Q. What kind of work was done around this monument? A. Absolutely nothing at all.

Q. Was there any post in this monument?

A. I think there was a little peg, or something sticking up there. I don't think there was any post. I think a surveyor's stick, or something like that.

Q. Did you go up on the hill more than once?

A. I have been up on the hill quite a number of times after our shaft was started; used to go up frequently of a Sunday.

(Testimony of W. J. Harris.)

Q. When was the last time you were up there, Mr. Harris?

A. I think the last time I was there when the patent notice was posted on the claim. I was the secretary at that time.

Q. Have you ever seen that location monument, the Dave Lewis Hope claim, since it was pointed out to you by Dave Lewis? A. Yes, sir.

Q. Did you see it more than once?

A. I think more than once, I could not say how many times.

Q. There has been some evidence introduced in regard to an attachment notice posted on that claim, do you know anything about that?

A. I saw it on one occasion.

Q. Where was it?

A. It was on this 4 by 4 piece; it was a 4 by 4 post there.

Q. What 4 by 4 post?

A. Dave Lewis location monument, or post, that he pointed out to us.

Q. Was there a location notice at that monument when you went there?

A. I never saw it; the post was marked, "Dave Lewis Hope"; I don't know whether the words "claim" was on it, or "mine," or anything; "Dave Lewis Hope," those three words were on there, on this post, in pencil.

Q. Did you see any other notice, an attachment, posted on that claim? A. No, sir.

(Testimony of W. J. Harris.)

Q. In going up, I understand you, you went up over the Mizpah? A. Yes, sir.

Q. And there has been some testimony as to a stake, a wooden stake, that at some time was on the Mizpah claim near a trail or near the upper lease would more correctly describe it, on the Mizpah claim. I show you a photograph, it is near the upper lease, as shown on this photograph; of Mount Oddie, which is an exhibit (Complainants' No. 3). Now, do you remember such a stake?

A. I remember a stake. I remember seeing a stake. I saw it a number of times after May or June, along the trail, marked "Mizpah Intersection."

Q. Just describe this stake, if you can, Mr. Harris?

A. The stake was to the left of the trail, and was two pieces nailed together. I think probably two by fours nailed together. No stone whatever there that I can remember; seemed to be a little bit of an excavation or hole right near it, and as if there had been either sort of hammered in the ground or a little place dug out, no rock there.

Q. What was the character of the ground around there, as to seeing a monument, or concealing a monument.

A. I think the ground right by the stake was somewhat bare; it seemed like a kind of redstone ground there. There was no monument there; there was this stake.

(Testimony of W. J. Harris.)

Q. Were there any signs whatever of any monument of rock or earth having been built anywhere near that stake? A. Not in that vicinity no, sir.

Q. Mr. Harris, you were secretary of the Tonopah North Star Mining Company, that is the defendant in this case, from its organization up until last July, were you not?

A. Up until a few months ago, I think it was about the first of the year.

Q. January, 1904? A. Yes.

Q. And as such secretary you had charge of the books of the company, did you not? A. Yes, sir.

Q. About how much money has been expended on the Ivanpah claim by the defendant company?

A. The total disbursements—

Mr. GOODWIN.—That is entirely irrelevant and immaterial, but we will not object.

The COURT.—It will go in for what it is worth.

A. Approximately the total disbursements, as I remember them, are something like \$70,000.

Q. What portion of that was expended in the year 1902?

A. We commenced operations there early in June of 1902, as I remember. We were active right from the commencement, and I could not say as to what proportion.

Q. Was there a fifth of that spent in the year 1902?

A. Well, we were running a tunnel as well as the

(Testimony of W. J. Harris.)

shaft at the same time, running both, sinking the shaft and running the tunnel.

Q. Where was the tunnel?

A. The tunnel was to the north, over the mountain.

Q. Was it run into the Ivanpah claim?

A. It was headed for the—do you want to know where the line was?

Q. Yes.

A. The line run right through our shaft, we put the shaft right within the tunnel line.

Q. Was the driving of that tunnel continued during the year 1902? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. Mr. Harris, was there \$500 expended in the sinking of the shaft in 1902? A. Yes, sir.

Q. Was there \$500 expended in driving the tunnel in 1902?

A. Yes, sir; our pay-roll was from two to three thousand dollars a month.

Q. In 1902 did they continue to drive that tunnel?

A. For quite a period, I don't know how long.

Q. Would you say there was five hundred dollars' worth of work done in driving that tunnel in 1903?

A. I would say so, we let two or three contracts.

Q. Was there five hundred dollars' worth of work done in sinking the shaft in 1903?

A. Yes, sir; several times that; our pay-roll was from two to five thousand a month.

Q. Since what date?

(Testimony of W. J. Harris.)

A. Well, from the time we started.

Q. In June, 1902? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. Now, were any roads built, Mr. Harris?

A. Yes, sir.

Q. Where was the road built from, and to where?

A. In order to get our supplies when we first began the shaft, we began the building of the road, which was extremely expensive, had to blast it out of solid rock.

Q. (The COURT.) What age man was Lewis? Was he a young man or an old man?

A. A man about sixty at least.

Q. Where did he come from?

A. I don't know. When I first met him, when I first heard the name, I thought it was another Lewis from Esmeralda County, that I knew.

Q. It was not he?

A. No, not the same man; that man is still in Hawthorne, quite an old man.

Cross-examination.

Q. You say you commenced operations there about the 10th of June, 1902?

A. Early in June, I could not say the date.

Q. Before commencing there, or just about the time you commenced, did you hear of any trespass notice being served on the company?

A. I never received any.

(Testimony of W. J. Harris.)

Q. That is not what I asked you. At that time didn't you understand, as secretary of the company, that a trespass notice had been served, one tacked up at the point where they were working, and one read to the foreman?

A. No, sir; I never heard of it; never heard of any trespass notice being posted on the claim, or served on anyone.

Mr. METSON.—I object as being incompetent and not cross-examination.

The COURT.—There is nothing to object to; he didn't know.

Q. Mr. Harris, as secretary of that company at that time, didn't you understand that Mr. Porter had gone up there and served a notice on your company?

Mr. METSON.—I object to that.

The COURT.—I will make the same ruling to that as the other.

A. I will tell you what I heard.

Q. All I want are the facts?

A. I heard it, some time since we commenced operations, that some one of our company, possibly the president, was notified through the mail, about an objection or protest, or something.

Q. Now, as secretary of the company, and interested in its affairs, wasn't it reported to you that a trespass notice, or notice, was tacked up there on a shed or little building that you had just put up? A. No, sir.

Q. You never heard of any such thing?

(Testimony of W. J. Harris.)

A. No, sir; the only thing I heard was just as I stated.

Q. And you never heard that the foreman in charge of that gang of men there that day, the 10th day of June, 1902, was taken to one side, and this notice read to him?

A. No, sir; I never heard it; the foreman didn't report to me. I will state this: that the development was not under my management at all; once and a while I would see the foreman.

Q. Did you ever see a copy of that paper? (Hands paper to witness.)

A. Not that I can remember.

Q. What time was it that you and Lewis and Davis left that Sunday afternoon?

A. It was along in the afternoon, towards evening, because after reaching town, returning, it was dark enough in the tent to light a candle to find his time-book.

Q. When was that?

A. Well, it was before we commenced operations there, and it was either April or May, but I could not say.

Q. April or May? A. Yes, or 1902.

Q. Did you know when Mr. Porter came up there?

A. Yes.

Q. Was it before or after he came up there?

A. I really could not say as to that.

Q. What is your best judgment?

A. I understand that he testified to coming in April.

(Testimony of W. J. Harris.)

Q. The 24th of April, as I understand the testimony, about that time.

A. It was very apt to be after he came, but I could not say whether it was before or after. I do not think it was in the month of March, because I came there early in March, the first few days in March. I think it must have been April or May.

Q. Of course, if it was May it was after Doctor Porter came? A. Yes.

Q. Did he take you right up first by this cut?

A. Well, we went by the cut, and I think we stopped there and looked at it. He said that he run it, he had it done.

Q. He said he had it done? A. Yes.

Q. Was that cut enlarged and a shaft sunk?

A. Was it enlarged?

Q. Yes; was it a cut about 14 feet wide running in with a shaft six or eight feet deep in the center, or was it just a plain cut about four feet wide?

A. Well, it was in the nature somewhat of a shaft; it was an excavation, a hole, really.

Q. Down in the ground? A. Yes, sir.

Q. If Doctor Porter did that work, then that must have been after he came that you went up?

A. I don't know who did it, but Lewis said that he had it done.

Q. What I mean is this: The testimony on our side is that the cut was run there, and that after Doctor Porter came he went up and enlarged it, and sunk this shaft;

(Testimony of W. J. Harris.)

that is, he widened it, and afterwards sunk this shaft; if that shaft was there, according to the testimony—

Mr. METSON.—It strikes me this is argument.

The COURT.—The idea is, whether it was before or after Doctor Porter came.

A. It is very likely to have been after the 24th of April, very apt to have been after.

Q. You state positively that what you saw there was a shaft in the work that you saw, that is, a little shaft?

A. Yes, I think it was more than a cut.

Q. It was a cut with a shaft?

A. Different times I was up there, I noted that it was larger than it was at some previous time that I had seen it, but this particular time, I don't know whether it was at its full capacity or not.

Q. And he told you that he had had that done?

A. Yes, sir.

Q. Did he tell you what work it was?

A. No, he didn't say. I don't think that he said what it was.

Q. Did he tell you it was his assessment work?

A. I don't remember his saying that.

Q. Didn't you inquire?

A. I don't think he stated, and I don't think I inquired.

Q. Why, you were there—

Mr. METSON.—I object to the why.

(Testimony of W. J. Harris.)

A. I can tell the motive for going up there, and what we were looking for. I was looking for the preliminary work of that claim.

Q. You thought if he had not done the preliminary work, but had done his assessment work, and that was not done within the ninety days, that you had a right—

The COURT.—The supposition is objectionable, as calling for a conclusion the point is what was there?

Q. He didn't tell you whether it was assessment work or location work?

A. No, sir; not that I can recollect.

Q. And you didn't ask him?

A. I don't think that I did.

Q. And that work was where, with reference to the present North Star shaft?

A. Thirty or thirty-five feet north and east, I should judge, a little up the hill; it was up above the shaft.

Q. When you say above, you mean up the hill?

A. Yes, sir; and a little to the north too.

Q. Then where did he take you?

A. To his location monument.

Q. Just on the mountain there?

A. On the ridge.

Q. As soon as you got up on the ridge, didn't he bring you right to the stake?

A. The next objective point was his stake, where we stopped again.

(Testimony of W. J. Harris.)

Q. The stake that he took you to was what direction from this work, from this cut?

A. It was north and east. I think we had to kind of go up, right in a B line for it; could not travel very well there, because those rocks slide, and it is very steep going up near the tunnel line, then on the ridge up, would bring us to that post.

Q. How far from that cut was it to the stake that he took you to?

A. Well, I really did not look at it for any purpose.

Q. Well, your best judgment and recollection; as you were traveling that night, how far do you think that you traveled from that cut to the stake that he took you to?

A. We didn't go in a direct line; went onto the ridge and then up the ridge.

Q. I didn't mean to ask how far you traveled; I mean how far was the stake that he took you to from this cut?

The COURT.—Your best recollection and judgment, approximately.

A. Really, I never thought of it as to the distance, and I don't know that I could state.

Q. Wasn't it about 300 feet?

A. Yes, I would think it was more than that.

Q. Would you swear positively it was more than 300 feet?

(Testimony of W. J. Harris.)

A. Very apt to be five or six hundred feet; it seems to me it is a long distance, I would not say.

Q. What I want to get at it, standing there that night in the twilight, after he had taken you to that stake, and looking down to the cut, how far did it seem to you?

A. I don't think I looked down to the cut again after going to this post; I don't think that I could see it; I doubt whether I could see it at all.

Q. You could not see this cut from the location post?

A. I doubt whether I could; I don't know whether it is a physical possibility or not; as a matter of fact, I am satisfied I didn't look back.

Q. Don't you think that Lewis could have taken you to a post about 300 feet from that work that night in a northerly direction from that cut; I am speaking about that particular night, not with reference to recollections formed from other trips you have made since then, but just recollecting what you did that particular night; don't you think Lewis could have taken you to a post about 300 feet northerly from that work there that he told you was the work that he had done?

A. It is the same post that I have seen frequently since, and it was the only post that I ever saw.

Q. What I mean is this: May not that post have been, when you saw it that night, at a point 300 feet north of that cut?

A. I don't think it could be; it was upon the ridge.

Q. I am speaking about that night. Is it not pos-

(Testimony of W. J. Harris.)

sible that that post could have been at a point 300 feet north of this cut when you saw it that night, and it was pointed out to you by Lewis?

A. No, it could not have been.

Q. Why not?

A. I will state at the time we got back to town, we spent a great deal of time on the other side looking around for this excavation I was looking for.

Q. Which excavation?

A. I was looking for something purporting to be the preliminary work, and I could not find any.

Q. Preliminary work of what?

A. Dave Lewis Hope claim.

Q. That is what you went up there for, to look for preliminary work and the excavation? A. Yes.

Q. And you went by that cut that he pointed out to you, and told you that he did, and you didn't ask him whether it was preliminary work or not; do you mean to go before this Court with such a statement as that?

A. That I didn't ask him what it was.

Q. You have testified that you went up there and didn't ask him whether it was preliminary work or assessment work?

A. We stopped there quite a little while, I should judge maybe five minutes, or more; stopped there discussing it, and he said he did it, and I asked him when he did it.

Q. If you were there looking for preliminary work

(Testimony of W. J. Harris.)

that Lewis had done, why didn't you ask him whether that was his preliminary work or not?

A. If I had asked him whether it was his preliminary work or not, the chances are he would not have known what I was getting at, anyhow.

Mr. METSON.—We object to the why, because that has been asked, and ruled out.

The COURT.—I think you are rather inclined to draw out some views of the witness, instead of getting at the actual fact of what was done. The Court will be liberal, but I would avoid that.

A. Mr. Goodwin, I was trying to determine in my own mind whether Mr. Lewis had any rights on that hill or not.

Q. When he pointed the monument out, did he show you any notice of location? A. No, sir.

Q. Did you look for one? A. I did not.

Q. Did you ask him if there was one?

A. He said it was his location monument, and the name was on the post, "Dave Lewis Hope"; he says, "There is the location monument."

Q. Did you ask him if there was a notice of location there? A. No, sir; I don't think I did.

Q. You didn't inquire for one?

A. I don't think I did.

Q. And you didn't look for one? A. No, sir.

Q. And still you were there to ascertain whether or not he had any rights? A. Yes, sir.

(Testimony of W. J. Harris.)

Q. And you were there to ascertain whether he had done any development work, and were along by this cut and didn't ask what it was?

A. I went there for the purpose of seeing if he had done any work, and I found, according to his own statement, that he had done this work, and I ascertained when it was done, the 1st day of February, 1902, and I wanted to determine whether he had done any other work, and I didn't find any.

Q. And then you concluded that he had no rights there on the hill? A. In my own mind, yes, sir.

Q. Wasn't Mr. Lewis much older than sixty years, was he not seventy?

A. A man out in the hills a great deal shows his age more than a man who is groomed, you might say, and he was fully, I should judge, that he was fully sixty, but I never had any means of determining.

Q. After he took you up there, how long was it before you were up there again; that is, from the first time that you have testified that he took you up there, how long was it before you were back there again?

A. I could not say; I was over that tunnel line a number of times; and after we commenced operations I was up there frequently of a Sunday; that is, I would walk up maybe early in the morning.

Q. What I mean is this: When did you next see that stake that you say he pointed out to you the first time he took you up; how long before you next saw it?

A. I could not say; I saw it a number of times in go-

(Testimony of W. J. Harris.)

ing over to the tunnel, looking up, and taking people, looking at the country generally, we could walk up over the Mizpah, and around there, and walk up the mountain to get a view, but I could not say.

Q. Were you ever at that stake to examine it from the time that he took you up there that Sunday evening, until now? A. Yes, sir.

Q. When was that time?

A. Well, I could not fix the date outside of one particular occasion, and that was some time in January, 1903; Mr. Salsberry, and I think perhaps Mr. Ish was up there; that is the only date that comes into my mind, but I know that I was there between the time I first saw it.

Q. You were not there for months after you first saw it, that stake, until you were there the second time, were you?

A. I think likely that I was; I was over that country very frequently.

Q. No; I mean to go up to that stake, look at it and examine it, and see that it was the same stake, in the same position as when you first saw it?

A. Well, I don't know as I had any particular occasion to; I saw the attachment notice on that stake, sometime either at this or a subsequent time, I could not say.

Q. Either at this or a subsequent time?

A. Yes, sir.

Q. When you went up there with Mr. Lewis, your

(Testimony of W. J. Harris.)

principal object was to see whether or not he had done his preliminary work, was it not?

A. I understood when he had done this work, showing it was clearly out of the ninety day limit, then I wanted to know if he did any other work that wasn't visible there, to see whether he had complied with the law, and owned the claim.

Q. How did you know that this work was not within the ninety day limit unless you examined the notice and knew what the date of the notice was.

A. Well, my associates in the ground had told me the exact date of this.

Q. From the record? A. Yes, sir.

Q. Did you make that examination with a view of invalidating the Ivanpah, that is, with a view of acquiring the Ivanpah, provided you determined that the preliminary work had not been done within the ninety days?

A. We had in mind taking the Ivanpah, but whether that was the prime motive at that time, I think it was mostly that; I wanted to be certain in my own mind, whether Lewis' statements that he had a claim up there in conflict with the tunnel line, or with our ground, as we termed it, whether he had any rights there; I wanted to satisfy my own mind.

Q. Thinking it over, don't you think it was with a view of resolving the doubt between the Ivanpah and that location, as to which was the better location to the ground? A. No, sir.

(Testimony of W. J. Harris.)

Q. Subsequently, you investigated with that object in view, did you not?

A. As to which claims we would take?

Q. Yes.

A. Oh, no; we never recognized the Dave Lewis Hope claim at all.

Q. You never recognized that at all?

A. No, sir, not in the least.

Q. You never made any arrangement with Mr. Davis by which he would take it over?

A. No, sir; I never did.

Q. Did the company?

A. I don't know that the company did. I never made any arrangement; never had any business talk with Mr. Lewis at all, outside of going up over this ground.

Q. Don't you, as an officer of this corporation, know at that time some arrangement was made by which the company would acquire the Dave Lewis title through Mr. Davis?

A. At a later time I saw and had among the papers a conveyance from Lewis of all his rights to Mr. Davis, and Mr. Davis to the corporation.

Q. As a matter of fact, wasn't that conveyance from Lewis to Davis fifteen days prior to any conveyance that was made by Mr. Ish to the company, of the Ivanpah?

A. That I could not say; the records will be the best evidence as to that; I could not say.

Q. Well, as a matter of fact, and as an officer of the corporation, don't you know that arrangement was made

(Testimony of W. J. Harris.)

with Mr. Lewis, prior to the time the company purchased the Ish title?

A. I will state right here, Mr. Goodwin, that no arrangement was ever made by a meeting of the board or private conversations taking over the title of Lewis; it was never recognized by any member of our company; and I testify that we have such a conveyance because it is the fact, and it was given to me by our attorney.

Mr. METSON.—I think this is all objectionable; if it were true that they did buy it, it cuts no figure,

The COURT.—Perhaps not, but I will admit it for whatever it is worth. Many things have an indirect bearing, and it is impossible to shift them out.

Q. Now, what was paid for that?

A. That I could not say.

Q. Don't you know that a certain sum of money and a certain number of shares in the North Star Company were given to Lewis for that conveyance?

A. I never had any business with Mr. Lewis, outside of going over that ground.

Q. I am not asking about the business; I am asking if you don't know, of your own knowledge, that a certain number of shares of the North Star stock, together with a certain sum of money, was delivered to Lewis for that conveyance that he made to Davis in the interests of the North Star Company?

A. I will state this; that I do not know, that is, I know by being told.

(Testimony of W. J. Harris.)

The COURT.—Not what you were told, but what you know. I suppose it is immaterial if they have got that whether they paid any money for it or not.

A. I will state this, Mr. Goodwin, if this is what you want; that is, that whatever was given to Mr. Lewis was not for his title; we never considered that he had any title; whatever was given to Mr. Lewis was given out of pure good will and charity.

Q. Let us get at the extent of this charity, and then I will leave the question. What was the number of shares you gave him?

Mr. METSON.—I object to that. Objection overruled.

Q. What number of shares of stock were given to him?

A. From my own actual knowledge, I don't know of a share being given him.

Q. Five thousand?

Mr. METSON.—I object to that because the witness has answered he didn't know.

Q. Were you the secretary of the corporation?

A. Yes.

Q. Don't you know what stock stood in his name?

A. Not a share.

Q. Do you know what stock was endorsed and delivered to him?

A. Of my own knowledge, I never saw the transaction, and don't know a thing about it. I will state this,

(Testimony of W. J. Harris.)

it is not my desire to evade or hide anything; if I am permitted to say what I believe.

The COURT.—I don't want what the witness believes or hears; I want to know what he knows.

A. I don't know anything about it.

Q. I think you stated that you never saw or heard of a notice similar to this. (Referring to paper in his hand.)

A. No, sir.

Q. Didn't you say that you heard that the president had received one by mail, or something of that sort?

A. I heard that there was some letters received, either from a Mr. Jury or Porter, in some way protesting against our operations there, or something of that sort; and I never saw any, or never received any.

Q. It was never brought to the files of the company?

A. No, sir.

Q. Don't you know that was just about the time you started in to work there?

A. It might have been, but I never paid any attention to it; it might have been.

Q. Now, this post that Mr. Lewis took you to see in a mound of rock in the size that you have described.

A. I don't think there was much of a monument there; it was a 4 by 4 post.

Q. You are sure that it was a 4 by 4 post?

A. Yes.

Q. Now, wasn't it split?

(Testimony of W. J. Harris.)

A. I could not swear as to that; not that I can remember; it might have been.

Q. Mr. Ish stated that his recollection was that it was a split piece of timber.

Mr. METSON.—We want the recollection of this witness.

A. I didn't pay much attention to it, outside of seeing the name "Dave Lewis Hope," and he said that was his location monument.

(By Mr. PITTMAN.)

Q. Just one question: You have stated that this stake, around which there was no monument, and near the trail, down near the upper lease of the Mizpah, was on the left-hand side of the trail; do you mean going up or coming down? A. Going up.

Mr. R. B. DAVIS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. PITTMAN.

Q. Your name is R. B. Davis? A. Yes, sir,

Q. How long have you been in the State of Nevada?

A. About twenty-six years, a little over—1878.

Q. Where have you resided since you have been in the State of Nevada?

A. My first place of residence was Sutro; next place was Dayton; next place was Silver Star, Esmeralda County; the next place was Tonopah.

Q. When did you first go to Tonopah?

(Testimony of R. B. Davis.)

A. My first trip to Tonopah, I landed there December 24th, 1900.

Q. Were you engaged in business in Tonopah at any time?

A. Yes, sir; from that time on to the present day.

Q. What business were you engaged in?

A. General merchandizing.

Q. Did you have a partner in business with you?

A. I did.

Q. Who was your partner? A. J. D. Lothrop.

Q. What was the name of the firm?

A. Lothrop & Davis.

Q. Were you acquainted with Dave Lewis in Tonopah, Nevada?

A. I was; yes, sir; I became acquainted with him in Tonopah.

Q. When did you first become acquainted with Dave Lewis? A. Why, it was in the summer of 1901.

Q. Did you ever have any business relations with Dave Lewis? A. Yes, sir.

Q. What were those relations?

A. Well, he had dealt some in the store there prior to my going to Tonopah to reside; you see I didn't reside in Tonopah regularly until July of 1901; I had business there in charge of another person; some time after I went there to reside permanently, in July, soon after the fourth, I don't remember just the exact date; somewhere between the 4th and 10th, I should judge; and it was

(Testimony of R. B. Davis.)

some time after that, in the summer, that I first got acquainted with Dave Lewis.

Q. When you got acquainted with him, did you have any business dealings with him? A. I did, yes, sir.

Q. What kind of dealings were they?

A. The first important business that I recollect was some time in the early fall; he came to the store, and he had a sack of money, and he wanted me to keep it for him, so I placed the money in the safe for him, with a tag on it; and that is about the first.

Q. How did he get that money?

A. Well, he would draw on me for money at any time that he wanted it, in small amounts; generally most of the amounts was quite small, a dollars, sometimes four bits, or a dollars and a half.

Q. Did he draw all that money out?

A. Yes, sir.

Q. Was that money left in the sack until it was all drawn out in that way?

A. No. It went on that way for several months, and at the end of each month we squared up with the store account; when he would draw four bits or a dollar, or whatever it would be, I didn't take the trouble to go into the sack; I would give it to him out of the till, and make a note of it, and at the end of the month, whatever the amount was that he drew in money, and whatever goods that he got, we would square up with the sack; take it out of the sack, and leave the sack in there; it went that way for several months, and finally

(Testimony of R. B. Davis.)

I told the bookkeeper the chances are that he would draw it all out that way, and we would just take the money out of the sack and give him credit for what was left; I think there was then about \$160 in the sack that he was given credit for.

Q. Do you know about what date that was?

A. Yes, I believe it was in along in December or January, somewhere along there; that is, December of 1901 or January of 1902, somewhere along there; I would not be certain about the date of that.

Q. Now, Mr. Davis, you have heard the testimony of Mr. Harris relative to a trip that you and Mr. Harris and Mr. Lewis took upon Mount Oddie some time in the spring or summer of 1902? A. Yes, sir.

Q. To look over a claim known as the Dave Lewis Hope Claim? A. Yes, sir.

Q. Now, state to the Court the substance of that trip?

A. Well, I went up on that trip expressly in Dave Lewis's interest.

Mr. GOODWIN.—We object to these self-serving declarations in Lewis's interest.

A. Well, I expected to be called down. Of course I want to state the facts in the case, and whenever I don't do that properly, of course call me down. We made an appointment to go over this ground, and as I said, my purpose was to advise Dave Lewis as to what he had in regard to it; and we made an appointment

(Testimony of R. B. Davis.)

and went up there; Harris was on hand but we didn't see Dave; we kind of looked up on the hill and saw somebody up there which we took to be Dave Lewis, up on Mount Oddie, so we went up there and found it was Dave Lewis; I think we found him along near where the North Star shaft is now, as near as I can tell, and I wanted him to show me where he done the work on the claim because I was told that the claim had run out.

Mr. GOODWIN.—Never mind what you were told.

A. He showed me this cut there, that McClure and Enright done.

Mr. GOODWIN.—The same objection, as to the declaration.

The COURT.—That goes all through the record, whether it is repeated or not.

Mr. GOODWIN.—With that understanding, we will make no further objection.

A. Well, he says, "There is some work I had done," he says, "You paid for it yourself," and I asked him when he had that done, and he said he didn't know for sure, but, he says "I have got the time-book in my cabin, and I can tell exactly the date." I was well aware of the fact, and I understood—

Mr. GOODWIN.—Never mind what you were aware of, or what you understood, just confine yourself to the facts.

Q. Then where did you go?

(Testimony of R. B. Davis.)

A. Well, knowing that this work was done along about the first of February, I asked him where he did his location work; "Well," he said, "I did some over here." We went up from there to where the location monument was, that was up a little bit over the ridge, kind of in a—well, I would say northerly direction from there, just a little bit over the ridge, and there was a monument there built of stone, I believe, and rock of some kind, to the best of my recollection there was a stake in it of some kind; I don't know what the dimensions of it were, or anything about it; that was his location monument, and I could not say positively whether we looked at the location notice or not, but anyway, he gave us to understand, and I think more than likely that we examined the location notice, I would not be positive about that; and he was very slow in getting around and we would have to continually keep reminding him that we wanted to see where he did this work; he said he would show us after a while, and we went around the hill on the other side.

Q. Which side; on the side towards town or the opposite side towards town?

A. First we went kind of north, right angles with town, and then around the hill to the east almost from where this—behind the hog back, and he showed us; it was in a kind of little ravine there, I recollect that very distinctly; he says here, "I did some work here." Well, it was really laughable to see that he would claim any work done; it seemed like a little mound was

(Testimony of R. B. Davis.)

scratched up through rocks and dirt, and there was a little stake driven in it, I don't think there was anything marked in it at all, and he could not show us any more work than that, and from that we went on down to his cabin, and he produced his time-book where he had kept the time of McCune and Enright in doing this work.

Q. What became of that book?

A. That book, Mr. Harris suggested that I take that book and keep it, and Mr. Lewis didn't object, and I took the book and put it in our safe.

Q. When did you take the book?

A. I took the book the same day we were up looking at this claim; I took the book, I had the book in my possession for some little time after that, and Mr. Harris and myself both examined the book, and Mr. Harris suggested that I take that and keep it, and I did, put it in the safe. I remember looking at it afterwards, and I believe I showed it, if I ain't mistaken, showed it to Mr. Pittman, but I would not be positive about that, but what became of the book I don't know.

Q. Have you tried to find the book?

A. Yes, sir, not only looked for it myself, but I had Stuart, the bookkeeper go through the safe, and I inquired of him about it, and he told me that it was in some of Dave Lewis's effects, his clothes, but I was positive that it was not in his clothes, because I had gotten it from him.

(Testimony of R. B. Davis.)

Q. What date did this time-book show that these men had worked there?

A. It was along about the first, I would not say it was the 1st, 2d, or 3d, but anyway, it was between the 30th of January and the 7th of February, 1902; I am positive about that.

Q. That showed what men worked there?

A. McCune and Enright.

Court adjourned until July 15th, 1904, at 10 A. M.

Court convened. July 15th, 10 o'clock A. M.

Direct Examination of Mr. R. B. DAVIS (Resumed).

Q. Mr. Davis, I am passing you four books, apparently account books, and I will ask you what those books are?

A. They are the day-books used in the store.

Q. What store?

A. The store of Lothrop & Davis.

Q. During what period of time?

A. This one was from August 9th to September 17th, 1901; this was from December 26th, 1901, to February 28th, 1902.

Q. Were those the books of original entry in your store? A. Yes, sir.

Q. I would like for you to turn in this book, upon the back of which is marked "December 28th, 1901, to February 28th, 1902," to the accounts for the month of February, the entries the first part of February.

(Testimony of R. B. Davis.)

Mr. GOODWIN.—We do not know the purpose of this, your Honor, but we object to the testimony of any entry made in these books unless the testimony shows they were entries made in the presence of some of the plaintiffs in this action. Mr. Davis is not a party to this action. This action is not upon any account or transaction between Mr. Davis and any of the plaintiffs in this action, and his original book of entry, as between the plaintiffs and defendant here, it seems to me is entirely incompetent.

The COURT.—Some matters have been testified to, and some occurrences have been testified to, and as to fixing the date, I think they would be admissible. I suppose it would be competent in order to fix some dates in supplying materials. We have your exception noted, and if the testimony should disclose anything outside, it would have come in under that exception; but I can see for that purpose it would be admissible.

(Plaintiffs except.)

A. That is the account of February.

Q. Now, commencing February 2d, see if there is any account of Dave Lewis?

A. I find on February 2d where there was a charge made to Dave Lewis.

Mr. GOODWIN.—The same objection.

The COURT.—Of course that objection goes to all the testimony in regard to this.

A. "Dave Lewis by McCune, 2½ pounds of powder,

(Testimony of R. B. Davis.)

forty cents; half box caps," it says half caps, it means half box, price thirty-five cents; "150 feet of fuse, forty cents."

Q. On February 2d?

A. On February 2d, 1902.

Mr. GOODWIN.—Now, if your Honor please, the subject-matter of the proposed testimony appearing, I move the Court to strike it out for the reason, that is is no evidence as between the plaintiffs in this action and the defendant; it is no evidence that at that time those articles were sold to Mr. Lewis by Mr. McCune, or through Mr. McCune, or at any other particular time. I can see that in an action as between Dave Lewis and Mr. Davis, he testifying that they were his original books of entry, then the law would step in, and being regularly kept, prima facie they would be evidence of the date, but as between these parties, and as evidence in this case, it seems to me it is entirely irrelevant and immaterial.

The COURT.—I am going to allow it in so far as it applies there, subject to your objection.

Mr. GOODWIN.—As I understand it, Mr. Pittman, this is for the purpose of corroborating the statement of Mr. McCune that the work he did there was about the first of February, is that it?

Mr. PITTMAN.—That is it.

Mr. GOODWIN.—This being a record of the 2d of

(Testimony of R. B. Davis.)

February, you offer that as corroborative of his testimony that he did it there the 1st?

Mr. PITTMAN.—I offer it as corroborative, and as I remember Mr. McCune's testimony, he bought the powder at Mr. Davis's store.

The COURT.—I will admit it. Plaintiffs except.

Q. Following along there, is there any other entry to Dave Lewis?

A. I find on the 6th of February there is charged, "Dave Lewis, to cash \$40," that is on February 6th, 1902.

Q. Now, I will ask you, Mr. Davis, if you know what particular cash that was that is charged to Lewis at that time?

A. My recollections are that it was to pay for the work done by McCune and Enright on this claim.

Q. I wish you would take the book marked "August 7th, 1901, to September 12th, 1901," and turn to the entries in that book from, say about the middle of August, along to the middle of September?

A. It will take some little time to go over that.

The COURT.—You might call attention to certain dates, it would be a matter of form.

Q. Between August 15th and September 15th, is there any charge to Charles J. Carr for any lumber in the Lothrop & Davis store?

A. I believe not; I have not seen any here; I started at August 26th and went to September 7th, and saw no

(Testimony of R. B. Davis.)

lumber charged to him; I will have to look over that, so I could swear positively and it would take some little time.

Q. You have examined from August 26th to September 7th? A. Yes, sir.

Q. And there are no charges against Charles J. Carr during that time? A. No.

Q. Mr. Davis, do you know whether or not in the month of August and September, 1901, your firm carried any lumber of dimensions 3 by 4?

A. I don't know of us ever carrying lumber that size.

Q. Do you know Charles J. Carr? A. Yes, sir.

Q. When did you first know of Mr. Carr?

A. The first that I knew Mr. Carr was about Christmas, 1900, I think it was on Christmas day, or the day following.

Q. Do you know Mr. Carr's general reputation in that community where he then lived for truth, honesty and integrity; you can answer that by yes or no?

A. I do.

Q. What was his reputation? A. Bad.

Cross-examination.

Q. You had a good deal of dealings with Mr. Carr?

A. Quite a little, yes.

Q. To what extent?

A. Well, in the first place we had dealings with the lease by Carr and Leidy, I believe it was called, and

(Testimony of R. B. Davis.)

then afterwards we had some dealings with Mr. Carr, private, after they had sold out of the lease.

Q. Did Mr. Carr pay you what he owed you?

A. Not all of it.

Q. Does Mr. Carr owe you anything to-day?

A. I believe he does; I think there is an account of about ten dollars.

Q. You think there is? A. Yes, sir.

Q. When did you present it?

A. Well, I could not say just when it was presented; there has been nothing said about it for the—the last time I ever recollect of mentioning it was after the amount of that attachment was paid; Mr. Carr spoke to me one day on the street; it seemed that there had been ten dollars that was overlooked in that attachment, wasn't put in, and whether it was my partner or someone else, I don't know, but I suppose some one had told Carr about it, but he called my attention to it; he says "There is ten dollars that is still owing you," he says, "I have not got the money now, but I will pay it to you."

Q. Mr. Carr called your attention to the fact that there was ten dollars omitted from the settlement?

A. Yes, sir; that is the first I knew of it.

Q. And he told you the first time he got the money he would pay you?

A. He said something to that effect.

Q. Did he dispute the bill in any way?

A. No, I wasn't presenting him with any bill at all.

(Testimony of R. B. Davis.)

Q. You and your partner had a settlement with Mr. Carr in which he paid you a sum of money which was accepted by you in full settlement up to that time?

A. I believe it was; I didn't attend to that part, I left it to my partner.

Q. As a member of that partnership, you know there was a settlement between your partnership and Mr. Carr, settling all matters up to a certain time, was there not? A. I believe there was a—

Q. Just answer the question please? A. Yes.

Q. That is a fact?

A. That is a fact as I understand it.

Q. After your settlement, and after he had your receipt in full for all demands up to date, he stated to you that ten dollars had been left out, had not been included, did he?

A. He spoke to me in a way that—he says, "That ten dollars, I will fix that some time, I have not got the money now, I will fix that some time."

Q. That was ten dollars that by mistake had been left out of this settlement, was it?

A. I believe so, that is the way I understood it.

Q. And Mr. Carr himself brought that to your attention? A. Yes, sir.

Q. Did you consider that honorable or dishonorable in Mr. Carr?

A. Oh, I didn't think much about it.

Q. Well is that one of the circumstances on which

(Testimony of R. B. Davis.)

you base your opinion of Mr. Carr, that his reputation is bad? A. No, sir.

Q. That is not one of them? A. No, sir.

Q. Will you examine that paper and state whether or not you know anything about it. (Hands paper to witness.) Is that signed your partnership name by your partners? A. Yes, sir.

Mr. GOODWIN.—If your Honor please, may we have an inspection of those books of the items from August 9th to September 12th?

The COURT.—Yes.

Mr. GOODWIN.—We now offer in evidence the following receipt:

Complainants' Exhibit No. 13.

§385.00. Tonopah, Nevada, May 21st, 1902.

Recd. from Charlie J. Carr the sum of \$355.99/100 settlement in full for account due for merchandise to date, and the further sum of thirty dollars receipt in full for cost in cases where C. J. Carr and Ott and Carr and Lyons were defendants and Lothrop & Davis were plaintiffs.

LOTHROP & DAVIS,

By J. D. LOTHROP.

(Receipt admitted and marked Complainants' Exhibit No. 13.)

(Testimony of R. B. Davis.)

Q. Mr. Carr dealt with you during the period of time he was there in Tonopah?

A. Yes, sir; he dealt considerable there.

Q. He owed you as high as what sum at any one time, the highest amount?

A. I guess that sum there is about as high as he owed, I don't know, I don't recollect of it being any higher than that, unless it was during the leasing time, and that was an account of Carr and Leidy.

Q. Did Mr. Carr ever come to you when he was sober, and you refuse him credit? A. Yes, sir.

Q. When was that?

A. Well, I could not tell the date, but it was along pretty well in the fall.

Q. Of what year? A. 1901.

Q. Did you get a lot from Mr. Carr in the town?

A. When I first went there—

Q. Just answer the question, Mr. Davis?

A. Well, I cannot say that I did, no.

Q. Don't you know that when you went there Mr. Carr gave you a lot, or two or three of them?

A. He sold—

Q. Just state yes or no?

A. Well, in saying that he gave me a lot, he showed me where I could build on.

Q. Didn't he show you where you could build on what he claimed to be his part of the townsite?

A. Yes, he did.

(Testimony of R. B. Davis.)

Q. And didn't he measure out two or three lots which you occupied and went on?

A. No, sir.

Q. How many? A. One.

Q. What was the size of it?

A. It was already staked out.

Q. Who had it staked out?

A. Well, I understood it was Gayhart.

Q. Didn't you understand that Mr. Carr—

A. I thought at the time that Carr and Leidy, it was on their ground, I was told it was on their ground.

Q. Well, you know it was on their ground at that time, don't you? A. No, sir.

Q. Don't you know now that that lot was on their ground at that time? A. No, sir.

Q. It was not?

A. I don't think it was on their ground.

Q. You don't think it was on their ground?

A. No, sir.

Q. Didn't they own that claim at that time?

A. They owned their claim back there, but I don't think that that lot was on their ground; I thought so at the time when I took to building there.

Q. Mr. Carr thought so at the time, didn't he?

A. Well, I think probably he did; I guess he did.

Q. And Mr. Carr gave you that lot?

A. Carr and Leidy both told me I could go ahead and build there, and afterwards I paid the location price for the lot.

(Testimony of R. B. Davis.)

Q. To whom?

A. Why, I don't know who did collect for the lots there, but I know the price of it was ten dollars; that was simply to pay for surveying.

Q. Don't you know that you got that lot from Carr and Leidy for simply what it cost them to have it surveyed and staked out?

A. No, sir; I don't know that they had it surveyed and staked out.

Q. You say it was staked out when you went there?

A. Yes.

Q. And you got it from Carr and Leidy?

A. I got the permission there from them.

Q. And you went into possession under their permission? A. Yes, sir.

Q. And built under their permission? A. Yes.

Q. And all you ever paid for that lot was ten dollars, which you understood was the cost of staking it out and surveying it? A. Yes, sir.

Q. What is that lot worth to-day?

A. Well, I don't know what it is worth.

Q. It is worth considerable money, is it not?

A. Yes, sir.

Q. Would you take a thousand dollars for it?

A. No, sir, I would not.

Q. Would you take five thousand dollars for it?

A. The lot and improvements, or the lot alone?

Q. The lot alone?

(Testimony of R. B. Davis.)

A. Well, if there was no improvements on it, I guess I would, if it was mine; I don't own it at present myself.

Q. Is the fact that Mr. Carr let you in possession of the lot, and only charged you the actual cost for it, is that one of the facts on which you base your opinion, that his reputation for truth, honesty and integrity is not good?

A. No, sir.

Q. Besides this, don't you know of Mr. Carr giving away a good many lots at that time upon those same conditions?

A. I think he did, yes.

Q. You know he did, don't you?

A. I am quite positive.

Q. Don't you know as far as building up the town and giving away lots, and helping to boost the camp, that Mr. Carr was liberal, and more than liberal?

A. He seemed to be quite liberal.

Q. In fact, he was much more liberal than anybody that you have seen there since, wasn't he?

A. No, sir.

Q. Have you known of many lots being given away there for ten dollars apiece, since Mr. Carr gave them away?

A. Yes, sir; any of the lots could be had at that price at that time.

Q. From whom?

A. From whoever owned the ground there; from the Butler Company, they let them build there about the same way.

(Testimony of R. B. Davis.)

Q. Now when was it that you and Lewis and Carr and Harris went up there on Mount Oddie?

A. Well, I could not tell what date, but it was pretty well along in the spring of 1902, I would say April or May, probably along there somewheres, I don't recollect exactly.

Q. As I understand you, you and Mr. Harris left the town together? A. Yes, sir.

Q. In the evening?

A. My recollection of it as that it was in the morning.

Q. Your recollection of it was that it was in the morning? A. Yes, sir.

Q. And you saw Lewis up near where the North Star shaft now is? A. Yes, up on that hill.

Q. And you went right up to him at that point?

A. Yes.

Q. In other words, he waited there for you to come up, is that the fact? A. Yes, sir.

Q. Then you met him at that cut, did you?

A. Met him up there in that neighborhood somewhere.

Q. Now describe the cut at that time, as you recollect it?

A. Well, to the best of my recollection it was just a cut run into the hill.

Q. And wasn't there a little shaft, a little hole?

A. I don't think there was any shaft there at that time.

Q. Mr. Harris' description of it was a shaft some five or six feet deep?

(Testimony of R. B. Davis.)

A. I don't recollect of any shaft; I recollect a cut being there in the hill.

Q. Now what I want to find out if I can, is, whether you were up there with Mr. Lewis before or after Doctor Porter was there; it seems to be admitted that Doctor Porter went there, and in the bottom of this cut sunk a shaft some six or seven feet deep; he went there not earlier than the 24th of April, according to the testimony?

Mr. METSON.—I think that might confuse the witness; refresh his memory by something else.

The COURT.—What is your recollection of it, that is all that he wants to get, what you saw there.

A. My recollection is that it was a cut.

Q. Now, as I understood from your testimony, you went up there as a friend, adviser and representative of Lewis?

A. Yes, sir.

Q. In other words you were protecting his interests, looking out for his interests, as against conflicting interests, or claimed interests of Mr. Harris and his company?

A. I went up there for the purpose of ascertaining, if possible, whether he really had a valid claim there on the hill; he had been talking to me about a claim, the Dave Lewis Hope, for months; I had not paid very much attention to it, and had not ever been up there on the ground.

Q. For several months he had been telling you that he had a claim up there, the Dave Lewis Hope claim?

A. Yes.

Q. And you went up, knowing that Mr. Harris might

(Testimony of R. B. Davis.)

have some conflicting interests, you went up as the friend and adviser of Lewis, to look out for his interests in the matter, did you? A. Well, in a way; yes, sir.

Q. When you came to this cut, did you examine it?

A. Yes, sir.

Q. What was the size of it?

A. To the best of my recollection it was probably about three feet wide, and seven or eight feet, or probably more, in the bottom, and just run into the side of the hill.

Q. Seven or eight feet long? A. I think so.

Q. And how deep?

A. Six or seven feet probably, in the face, might be more, I would not say.

Q. Did you ask Lewis what that work was?

A. Yes, sir.

Q. What did he say?

A. He said: "That is the work that I had done," he said it was work that he had done, and he was speaking to Mr, Harris and I both, and he says, "You paid him for it, I got the money from you to pay him," something to that effect.

Q. Did he say anything with reference to its being his location or his assessment work?

A. Well, I don't recollect of him saying designating which it was, but he claimed that as work that he had done on the claim.

Q. He simply claimed it as work that he had done on the claim? A. Yes, sir.

(Testimony of R. B. Davis.)

Q. You were familiar with mining laws at that time?

A. I was to a certain extent; yes, sir.

Q. What was said there with reference to stakes or monuments there at the cut?

A. I cannot recollect whether there was anything said there or not.

Q. Right there, did Lewis represent to you that this work was on his claim?

A. I think he did; he supposed it was, yes.

Q. Did he point out to you any vein or ledge, or stringer, or anything of that sort?

A. There was kind of a black streak there, a kind of manganese, that is about all there was to it; a kind of a little black streak of something.

Q. He pointed out that little black streak to you as his ledge, didn't he?

A. Well, I don't recollect about that, I never seen a streak there.

Q. Didn't you ask him where his ledge was, or anything of that sort?

A. No, I don't know as I did.

Q. You don't know as you did?

A. No, sir.

Q. What was said then about stakes, if anything?

A. Well, I don't recollect just what was said; but I kept asking him where his monuments were, and where, if he had done any other work.

Q. What did he say?

A. He said, "They're up here," pointed up that way (indicating), and we went up then towards the location monument.

(Testimony of R. B. Davis.)

Q. When you left the cut, which way did you go?

A. We went towards the location monument up over the ridge.

Q. Now, Mr. Davis, didn't you and Mr. Harris go to a monument about 300 feet north of that cut that night?

A. I should judge it was about that far, maybe more, I would not say just how far it was.

Q. Don't you know that the monument to which he took you was north, and if not exactly north, a little west of north, about 300 feet from that cut?

A. To the best of my recollection, I would think it was a little east of north, but I would not be positive.

Q. You examined his notice of location, didn't you?

A. I would not say for certain about that; the chances are we did.

Q. Don't you know that he represented to you that that cut was practically in the middle of his claim?

A. No, I don't recollect that; I don't recollect of him claiming at all about that.

Q. You don't recollect of his claiming anything at all about that? A. No.

Q. Now from this monument and stake he took you to, you could see the cut down the hill, couldn't you?

A. Yes, we could see about where it was, I guess.

Q. Wasn't the cut that you saw there then a big plain cut from this monument that he took you to?

A. It was plainer from the lower side that it would be from over there.

(Testimony of R. B. Davis.)

Q. The monument that he took you to, couldn't you plainly see this cut down there below it about 300 feet?

Mr. METSON.—The witness said he could not designate the distance, it might be 300 feet, or more; counsel is assuming a certain state of facts in his cross-examination; they are not in the nature of quite fair questions; he may not intend that, and I do not think he does, but I do not think these things should be assumed.

A. I could not say anyway, I could not say whether it was 300 or more.

Q. After he took you to this monument, then what else was done or said?

A. Well, we kept asking him where his location work was done, and he said, "Down this way," pointing north.

Q. Pointing north?

A. Yes; he says, "We will get to that pretty soon," and so afterwards we went in a northerly direction down over the hog back some little distance and he seemed to be—could not find any work, and then we went off towards the east, around pretty well east, and he claimed there, "Here," he says, "I done some of it here." Of course there wasn't any work anything like location work, wasn't any work at all done there, any more than it looked like a little ground had been scratched up, and a stake in it.

Q. What did you say to him with reference to his location after you had examined the matter?

A. Well, I told him that if he done that work in Feb-

(Testimony of R. B. Davis.)

ruary, that I didn't think he had any valid claim there at all.

Q. And what did he say?

A. Well, he says "I have"; but I told him that I could not see how he could hold it, and advised him to take whatever those fellows saw fit to give him for his interests, his claim, whatever it is.

Q. Afterwards did you make a trade with him, and get a conveyance of that mining claim?

A. Yes, I believe I did.

Q. When was that? A. I could not tell.

Q. Was it the 15th day of June, 1902?

A. I could not say.

The COURT.—Have you the deed?

Mr. GOODWIN.—Yes. I don't know whether that deed is in evidence or not, your Honor. I think not. The deed is dated June 28th and acknowledged June 30th.

Q. (The COURT.) That is the instrument, I suppose?

A. Probably it is, I could not say as to the date, I didn't take any great interest in that; I simply was satisfied that Dave could not do anything any more than what they saw fit to give him for his good will.

Q. What did you give Lewis for that deed?

A. I don't recollect now.

Q. Well, give us your best recollection?

A. What did I give him for the deed?

(Testimony of R. B. Davis.)

Q. What did you pay him for that transfer?

A. Well, there was a stock transaction, and some cash.

Q. How much cash did you give him?

A. I think there was a hundred dollars.

Q. Have you entry of that in your cash-book?

A. I think not.

Q. Didn't you keep a cash-book at that time?

A. I didn't keep the books myself; that didn't go through these books, anyway; I don't think there is any account of that transaction on the books here at all.

Q. (The COURT.) Was the transaction between you and Lewis or was it between the firm of Lothrop and Davis?

A. The stock was turned over by Mr. Golden.

Q. And who was the cash turned over by?

A. Mr. Golden also, I believe.

Q. Now, what was the amount of cash?

A. A hundred dollars.

Q. What was the number of shares of stock?

A. Five thousand shares.

Q. At that time what was the North Star stock selling at on the market?

A. I think the market price then was twenty-five cents; I don't recollect for certain.

Q. Previous to this deed, you had attached that mine too, as the property of Carr to secure an indebtedness that you claimed that he owed the firm, had you not?

A. Yes, sir.

(Testimony of R. B. Davis.)

Q. You say that you had in August and September, 1901, no 3 by 4, and that the firm never kept any?

A. I said I didn't think we had.

Q. Will you look at an item on page 159, at the top of the page, and state whether or not after examining that item, you can refresh your memory as to whether the firm carried any 3 by 4's?

A. I see there is a charge there of one piece of 3 by 4.

Q. Now using that to refresh your memory, what would you say with reference to the firm carrying that size lumber at that time?

A. I say we might have, or that might have been a mistake on there.

Mr. GOODWIN.—We would like a little more time to look through here and see if any more mistakes of that kind have been made.

Mr. METSON.—The book is at your disposal, and you can take it up this afternoon, we have no objection.

Redirect Examination.

Q. Mr. Davis, is Dave Lewis alive now?

A. No, sir.

Q. When did he die?

A. I cannot recollect the date of that; it seems to me nine or ten months ago. I don't recollect the date.

Q. Was it in the winter time, last winter?

A. It seems to me it was in the fall, or early winter.

(Testimony of R. B. Davis.)

Q. Do you know of Mr. Lewis' financial condition from the first of May, 1902, until the time of his death?

A. Yes, sir.

Q. What was his means of support during that period of time, if you know?

A. Well, he got everything for his support from us there in the store.

Q. Did he bring any money and deposit with you in the month of May, 1902?

A. Not that I recollect of.

Q. Was he indebted to your firm at the time of his death? A. Yes, sir.

Q. Could you approximate about the sum that he was indebted to your firm?

A. I could not say exactly.

Mr. GOODWIN.—I do not see the relevancy of this.

The COURT.—It is immaterial whether he was indebted to him or not so far as the issue in this case is concerned.

Mr. PITTMAN.—The object is to show his financial condition; and I wasn't to show that during his life Mr. Davis was looking after this man, and had the most intimate relations with him in his business.

The COURT.—It seems to be agreed upon by both sides.

Q. Do you know when the North Star Company was incorporated, when it came into existence?

(Testimony of R. B. Davis.)

A. No, sir, I do not.

Q. How long after you got this deed from Dave Lewis before you got any stock of the North Star Company?

A. I could not state that either.

Q. It was not at the same time you got the deed, was it, from Lewis?

A. I could not say that either.

Q. That deed was executed by Lewis to you, was it not?

A. I believe it was, yes.

Q. Just state to the Court the object in the execution of that deed to you, if there was any, whether you bought it, or claimed to own the property at any time, or the circumstances?

A. Whether I claimed to own it?

Q. Did you ever claim to own any interest in the Dave Lewis Hope claim yourself?

A. No, sir, I did not.

Q. Well, then, explain the circumstances why you took this deed?

A. Well, it was on account of—I understood that a former deed was made conveying from Lewis to Porter.

Mr. GOODWIN.—We object to his understanding.

The COURT.—The deed itself will show whether it was after or before.

A. Well, I know one thing, that Lewis kept telling me—

Mr. GOODWIN.—We object to what he kept telling you. His declarations in that particular certainly

(Testimony of R. B. Davis.)

would not be competent as against Mr. Porter, or his transfers.

Q. Well, did you claim to own that property that you got the deed from Dave Lewis? A. No, sir.

Q. Who did own it?

Mr. GOODWIN.—Now, I object.

Mr. PITTMAN.—My object, and it may not be considered material, is this: they have attempted here, the way the question was brought out by the attorney was, that Mr. Davis gave 5,000 shares of stock to Mr. Lewis.

Mr. GOODWIN.—A hundred dollars, and five thousand shares of stock, then valued at twenty-five cents a share, which would be \$1,350 for that conveyance.

The COURT.—What difference does it make whether it was one dollar or thirteen thousand. It is the principle. It is the principle that might reflect on the transaction, but it does not reach any issues.

Recross-examination.

Q. Do you recollect the sum of money that Dave Lewis deposited with you? A. At what time?

Q. You said that he came and brought a sack of money, and put in your safe?

A. I don't recollect the exact amount now. It seems to me it was five or six hundred dollars.

Q. About five hundred dollars, wasn't it?

A. About five or six hundred dollars; I would not say.

(Testimony of R. B. Davis.)

Q. Do you know where he got that money?

A. Got it from the sale of a lot.

Q. Do you know who gave him that lot?

A. I don't know anything about it.

Q. Don't you know that Mr. Carr gave him that lot, and Lewis sold it for \$500, and that is the \$500 that he brought and put in your safe?

A. I don't know anything about that.

Q. Didn't you hear that from Mr. Lewis?

A. No, sir.

Q. Didn't you know that at that time, that that is where Lewis got his lot from, Charlie Carr and his partner?

A. No, sir, I don't know how he got the lot. I knew where the lot was.

Q. It was on the Carr ground, wasn't it?

A. Well, I believe it was.

Mr. METSON.—There are two deeds we would like to offer in evidence that belong to the other side. If they wish we will have them withdrawn, and certified copies made. No objection.

(Deed from Davis R. Lewis and Charles J. Carr, by his attorney in fact David R. Lewis to Jerome P. Porter, dated May 15th, 1902, and filed May 19th, 1902, marked Defendant's Exhibit "C." Deed from D. R. Lewis to Jerome P. Porter, dated May 19th, 1902, filed May 24th, 1902, marked Defendants' Exhibit "D.")

Mr. L. O. RAY, recalled by defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. You knew Mr. Carr out there at Tonopah, did you? A. Yes, sir.

Q. Can you tell me whether you know the general reputation of Charles J. Carr in Tonopah for truth, honesty and integrity, in the community in which he lived at the time you were there, and knew him. Answer yes or no? A. Yes, sir.

Q. State whether it was good or bad. A. Bad.

Cross-examination.

Q. I think you stated you were interested in this suit? A. Only as a witness, sir.

Q. Only as a witness now? A. Yes, sir.

Q. You were very much interested in the North Star Development Company at one time, were you not?

A. Yes, sir.

Q. And have taken considerable interest in the prosecution of this trial, have you not? A. Yes, sir.

Q. And very anxious to see the defendant succeed, are you not? A. I am, sir.

Q. Decidedly so, are you not? A. Yes, sir.

Q. Do you believe Charlie Carr in his right mind, and not under the influence of liquor, would do any man on earth a wrong or injury? A. I don't know.

Q. You don't know? A. No, sir.

Q. Well, do you believe he would, as man to man, and honestly, do you believe that he would?

(Testimony of L. O. Ray.)

A. I know only what I have heard said.

Q. Answer my question if you can, Mr. Ray. Right down in your heart do you believe Charlie Carr, sober and in his right mind, would do any man on earth an injury?

Mr. METSON.—It is not what the witness believes.

The COURT.—I have allowed the testimony. The point is whether his reputation in the community in which he lives, for truth, honesty and integrity is good or bad; that is, the reputation, not what you think. If you can answer the question, you may.

A. If your Honor please, there is ties that bind men together, and those are ties that a great many of us right here are bound together with, and that I consider very important, and for that reason I wish to be very careful what I say.

The COURT.—As to your individual opinion?

A. Yes, sir.

The COURT.—I do not think your individual opinion would have anything to do with it. A witness is not giving his own views when he states the general reputation.

Mr. JAMES McQUILLAN, a witness called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Where do you reside? A. Tonopah.

(Testimony of James McQuillan.)

Q. How long have you resided there?

A. Since January, 1901.

Q. Do you know one Charles J. Carr?

A. Yes, sir.

Q. Did you know him in February?

A. Yes, sir.

Q. What was your business in Tonopah?

A. Mining.

Q. Was he in Tonopah at the same time you were?

A. Before I was there.

Q. And remained after you went there, did he?

A. Yes, sir.

Q. State whether or not you know the general reputation of Charles J. Carr in the community in which he lived, to wit, Tonopah, where you knew him, for truth, honesty and integrity?

A. Well, I am sorry to say it was not very good.

Q. You did not know his reputation there, did you?

A. Yes, sir.

Q. State whether it was good or bad?

A. Well, it was bad.

Cross-examination.

Q. What interest have you in this suit?

A. None whatever.

Q. Are you associated with Mr. Golden or any of the parties to this proceeding?

A. I don't think I am associated with a gentleman in the crowd.

(Testimony of James McQuillan.)

Q. At whose request did you come here?

A. I was subpoenaed on the street this morning.

Q. Did you come from Tonopah to attend this trial?

A. No, sir.

Q. What have you heard said about Mr. Carr over in Tonopah?

A. I would rather you would not ask those questions. I don't wish to go into those details at all; it is not a very nice position to be placed in, and the less I have to say in regard to the matter the better I would like it. It is not a desirable position to be placed in, put here on the witness stand to cry down a man's character.

Q. No, it is not an enviable position, I will admit that, Mr. McQuillan. Now, will you answer my question please.

(Question read.)

A. I have heard said that Mr. Carr was not a desirable citizen.

Q. Was not a desirable citizen?

A. Was not a desirable citizen.

Q. By whom?

A. By a great many of the business men.

Q. Did they specify any particular reason for his not being a desirable citizen?

A. They did.

Q. What was it?

A. Dishonorable.

Q. In what way?

A. Well, in various ways.

(Testimony of James McQuillan.)

Q. Did you ever hear it claimed that he was a claim jumper?

A. No, I don't know as I have, I don't think I have.

Q. Did you ever hear it said that he attempted ever to claim any land in that neighborhood, that he didn't have the first notice on?

A. Yes, sir.

Q. Which claims?

A. Well, Mr. Carr has claimed ground that he had the first notice for, and disposed of it, and claimed it the second, third and fourth time.

Q. In what way, relative to town lots there?

A. In relation to town lots.

Q. Did you ever hear of a second or third deed that Mr. Carr ever made, or did you ever hear anybody claim that Mr. Carr made the second or third claim to these lots?

The COURT.—I do not think we ought to go into those particulars of it; it is the reputation of a man in the community, and not the individual knowledge. It is not to be expected that what a man hears that he is going to look for the deeds, or becoming an intermeddler to look it up. He only goes on what he hears, and what he actually knows. If you want to call it out, and he is willing to give it, all right.

Q. Is not all you ever heard about Mr. Carr was that he got drunk over there, and it is claimed that he disposed of town lots there to several different parties?

A. That is about right.

(Testimony of James McQuillan.)

Q. Is not that about all you ever heard about Mr. Carr?

A. I have had quite a little dealing with Mr. Carr.

Q. In what way?

A. In properties, of Tonopah mining ground, in the West End lode.

Q. In what way did you have dealings with him?

A. I was one of the parties that bought some ground from Mr. Carr out there.

Q. The West End? A. Yes.

Q. And what subsequently happened?

A. Well, we have had trouble. We haven't got our patent as yet.

Q. Was he in possession when you bought?

A. He was.

Q. Did he put you in possession? A. He did.

Q. Did he give you whatever title he had?

A. He did.

Q. Did he accept what he agreed to take for the property? A. He did.

Q. At the time did you know of any adverse claim to it? A. No, sir.

Q. Did he know of any adverse claim to it?

A. I don't believe he did.

Q. You don't believe he did. Then what was there dishonorable in that transaction?

A. Nothing dishonorable. I didn't say it was dishonorable. I simply said I had some dealings with Mr.

(Testimony of James McQuillan.)

Carr myself. I didn't say there was anything dishonorable about it. I simply stated that I had a great deal of dealings with Mr. Carr myself.

Q. And that you had a good deal of trouble?

A. Yes, we have had trouble in regard to our patent, adverse interests.

Q. Now, you have charged Mr. Carr up with that, haven't you, with all the trouble that you have had?

A. I have.

Q. Why?

A. Because he was the direct cause, I thought.

Q. In other words, if he had not been in possession, and had not delivered it to you, and had not sold you the property, and you had not bought it, you would not have had any trouble?

Mr. METSON.—I object to that on the ground it is argument.

(Objection sustained.)

(By Mr. METSON.)

Q. You were asked whether or not you had heard other things about Mr. Carr other than this question of property. Did you or did you not hear other things in that community respecting Mr. Carr?

A. Oh, yes; I heard a great deal.

Q. Will you please state them?

A. I cannot remember them.

(Plaintiffs object to the question. Objection sustained.)

Mr. J. T. DAVIS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Davis, what is your business?

A. I am employed by the State Bank & Trust Company in this city.

Q. Did you ever live in Tonopah? A. Yes, sir.

Q. Did you know one Charles J. Carr?

A. I did not. I may have seen him, but I have no knowledge of him.

Q. He is the gentleman here. (Indicating.)

A. I cannot identify him; no, sir.

Q. Did you know of him out there?

A. I knew of a man called Charlie Carr in Tonopah, but I cannot identify this gentleman as he.

Q. Can you state the general reputation for truth, honesty and integrity in Tonopah of Mr. Carr?

Mr. GOODWIN.—We object as incompetent.

The COURT.—Well, he knows the name. We will take it for what it is worth in that connection.

Q. State whether it was good or bad for truth, honesty and integrity? A. It was bad.

(No cross-examination.)

Mr. WILSON BROUGHER, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Brougher, you lived in Tonopah at one time?

(Testimony of Wilson Brougher.)

A. Yes, sir.

Q. State what occupation you followed there, if any?

A. Mining.

Q. And do you fill any official position in this state at the present time? A. Yes, sir.

Q. Did you know one Charlie Carr or Charles J. Carr in Tonopah? A. Yes, sir.

Q. I am not going to ask you, Senator Brougher, as to what you individually know. I just want to know what you heard: Just state whether or not you know the general reputation of Charlie Carr, or Charles J. Carr, for truth, honesty and integrity, in Tonopah; yes or no?

A. Well, personally, I don't know, but report.

The COURT.—Q. Well, the general reputation in the community, did you know? A. Yes.

Q. State whether it was good or bad in the community, his general reputation?

A. Well, I understood it was bad.

Cross-Examination.

Q. What do you mean when you say you understood it was bad?

A. Well, from reports I have heard, and rumors; of course, I don't know personally.

The COURT.—It is not your personal knowledge.

A. It is just what I have heard.

Q. Have you heard his reputation discussed much until this suit was commenced?

(Testimony of Wilson Brougher.)

A. Well, I have not heard it lately; it was quite a while ago; reports that came from Tonopah by different ones, that is all I know about it.

Q. Haven't those reports and rumors been principally carried to you, or heard by you, from parties connected with this suit? A. No, sir.

Q. Mr. Golden and Mr. Ramsey?

A. No; I never heard them say anything.

Q. You never heard them say anything?

A. No.

Doctor A. L. HUDGENS, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Where do you reside, Doctor? A. Tonopah.

Q. How long have you resided in Tonopah?

A. About three years and a half.

Q. You were there in 1901 and 1902, were you?

A. Yes, sir; most of the time.

Q. Did you know Charles J. Carr, then?

A. I did.

Q. State, Doctor, whether or not you ever knew of any location monuments being erected along some time in 1902, marked Mizpah Intersection?

A. Yes, sir; I saw such monuments.

Q. And what monuments were they, if you please?

A. In the summer or the latter part of the spring of 1902, there were two new monuments that appeared on the Silver State claim; one about two or two hundred

(Testimony of Dr. A. L. Hudgens.)

and fifty feet northerly from the Desert Queen shaft, marked the "Southwest corner of the Mizpah Intersection"; this appeared some time after May the 4th, 1902; I don't know the date exactly, because I was in and out of Tonopah at the time a good deal; I had been east, and I don't remember whether it was there just before going east or afterwards; but at the time of the sale in May, they were not there. Then there was another about 600 feet from this one in an easterly direction, towards the line of the G. & H. tunnel; it was marked the "Southeast corner of the Mizpah Intersection"; I don't know who put them up, but I was told—

Mr. GOODWIN.—Never mind what you were told.

Q. I will ask you this question, Doctor: At the place these monuments were erected, had there been any monuments prior to May 4th, 1902? A. No, sir.

Q. I will ask you further, if you knew the general reputation for truth, honesty, and integrity of Charles J. Carr, in Tonopah, the community in which he lived; answer it yes, or no? A. Yes.

Q. State whether or not it was good or bad?

A. In the early history of the camp, I never heard anything to the contrary; later on, I did, general rumor.

Q. That is all we are asking about, the general reputation, not what you personally know; was it good or bad?

A. It was bad; good in the early part, and not so good in the latter part of his stay there.

A. Do you know Doctor Porter? A. I do.

(Testimony of Dr. A. L. Hudgens.)

Cross-Examination.

Q. What other marks were on those posts that you saw there, Doctor?

A. Would you like a kind of description of the post and monuments?

Q. Yes.

A. They consisted of rock monuments with a 4 by 4 post in the center, if I remember correctly; I think it was marked with a pencil "Southwest corner of the Mizpah Intersection."

Q. Anything else?

A. That is all that I noticed.

Q. Wasn't "Dave Lewis Hope" on them?

A. I don't remember seeing it; I didn't see it.

Q. Well, you had heard of the Dave Lewis Hope claim there before that time, hadn't you?

A. Yes, sir; I had heard of such a claim.

Q. And you knew approximately where it was located, did you not?

A. Well, I knew it was on the west slope of that hill, or claimed to be, I presume that is approximately.

Q. And you had heard that fact quite a while prior to that time? A. Yes, sir.

Q. And you understood at that time, didn't you, that it covered ground in there north and northwest of the Mizpah on the side of the mountain there somewhere?

A. Yes, sir.

Mr. METSON.—We object to his understanding.

(Testimony of Dr. A. L. Hudgens.)

The COURT.—What you know of your own knowledge, as to the lines, or location, or situation.

A. I don't know a thing as to where it was only what I had heard; and I had reasons for not knowing which I could detail if it was necessary.

The COURT.—I do not think it is necessary; just the fact.

Redirect Examination.

Q. Doctor, I am going to show you an exhibit that is marked here Complainants' Exhibit No. 3, and ask you if you can recognize the building in the right-hand corner? A. Yes, sir.

Q. What building is that?

A. That is the company house.

Q. What company?

A. Tonopah Nevada Company.

Q. Who lived there, if you know?

A. Mr. T. L. Oddie and Mr. Siebert.

Q. State, Doctor, with reference to that building, were these Mizpah Intersection stakes to the right or left of it?

A. Well, as I look at it, they were a little to the left of it.

Q. Do you know what claim that building was on?

Q. Do you know what claim that building is on?

A. It is on the Desert Queen.

Recross-examination.

Q. Would you say that the points indicated by "P,"

(Testimony of Dr. A. L. Hudgens.)

“T” and “C” were approximately the position of the posts that you saw?

A. No, sir; as I understand this, this is way over towards the north side line of the northeast corner of the Mizpah claim, in the way it appears to me on this map and from the slope of the hill.

Q. Cannot you get your bearings from that dump?

A. Yes, sir; I do.

Q. When was it you saw those posts?

A. It was in the latter part of the spring, or in the early part of the summer of 1902; some time after the date of May 4th; that was the day of the sale we made, and during this time we were all over this hill with a whole party, and there were absolutely no monuments in that locality at the time.

Mr. FRANK GOLDEN, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Golden, what is your full name?

A. Frank Golden.

Q. And do you know anything about Tonopah, were you ever living there? A. Yes, sir.

Q. When did you first go there?

A. I went there in March, 1901.

Q. State whether or not you ever saw a monument having a notice in signed by one Carr and one Lewis, called the Dave Lewis Hope? A. I have.

(Testimony of Frank Golden.)

Q. Could you tell the Court where that monument was?

A. That monument was almost on the top of Mount Oddie.

Q. About how far from the top of Mount Oddie, and what direction from the top?

A. Well, it was west of the apex of Mount Oddie.

Q. About how far below the apex was it, vertically.

A. I should judge 40 or 50 feet, have to look up the side of the mountain.

Q. And about what distance from the top of the mountain?

A. I could not say; might be 75 or 100 feet; somewhere around there, 75 feet.

Q. Just describe that monument, and what marks were on it, if any?

A. Well, the first day I seen it, it was knocked down, it seemed to be knocked over, and there was a post there, and it looked to me like there was a paper on it, like an attachment paper; it was torn, but you could see by the top of it it was some kind of an attachment paper; part of the paper was torn off.

Q. Did you see any notice of location there?

A. No.

Q. And when did you first see that monument?

A. Well, it was about the third trip that I made up the mountain.

Q. The third trip you made up the mountain?

A. Yes.

(Testimony of Frank Golden.)

Q. Were there any marks on that post, lettered in any way?

A. No, I didn't notice it; well, I noticed it afterwards.

Q. What did you see afterwards?

A. I see the location notice of Carr and Lewis.

Q. Can you state the date when you first saw that monument, in months and days and the year?

A. No.

Q. Don't you remember now? A. No.

Q. You have heard some testimony here with reference to the time when a certain cut was dug by McCune and Enright? A. Yes.

Q. Can you state when that cut was excavated, if you know?

A. Well, it had to be excavated after the 5th day of January; the first day I seen it was in February; I was away for a month; I was out of town for a month before that.

Q. February of what year? A. 1902.

Q. Was it there in 1901? A. No.

Q. Had you been in the vicinity where you saw the cut later on in 1901?

A. Well, I was in that vicinity from the months of July, August, September, October, November and December, and until after the first of the year pretty near all the time, outside of a few days each month, that I would go home, come into Carson.

(Testimony of Frank Golden.)

Cross-examination.

Q. Cannot you fix the time that you first saw that monument that you have testified to?

A. Well, it was some time in November, 1901.

Q. And at that time that post had what you thought was a notice of attachment on it?

A. Now, I don't exactly remember the dates, the time that I noticed this attachment; it was on this second or third time I went there that I seen this attachment paper on there; the first time I seen that attachment paper on was, I believe, the second or third time that I went on the mountain.

Q. The second or third time? A. Yes

Q. You were and are the president of the North Star Company, are you not? A. Yes.

Q. You were the president from its inception, were you not? A. Yes, sir.

Q. Early in the month of June, although the corporation had not been actually, legally organized, you had banded yourselves together to organize the corporation, hadn't you, and had started your work up there on the mountain? A. Yes.

Q. In other words, you started the work there before you got your actual, legal incorporation?

A. Well, we were at work before that on the ground, running a tunnel on the side of the mountain.

Q. I am speaking now with reference to where the present North Star shaft is; were you not at work there along about the 5th or 6th, or 10th of June?

(Testimony of Frank Golden.)

A. I don't remember exactly the date that we organized, and I don't remember the exact date that we started that work.

Q. I believe you filed your articles with the Secretary of State, which is the last step, before the 2d of July?

A. That was in the hands of Mr. Harris, I don't remember.

Q. Don't you recollect you were at work there, starting or squaring off for the work of sinking the North Star shaft, about the 1st or 10th of June?

A. Some time in June; I don't remember the time.

Q. Now, as president of the company, and about that time, did you get a notice from Doctor Porter, signed by Doctor Porter, that he claimed that ground?

A. Not that I remember.

Mr. METSON.—I object; it is not cross-examination.

The COURT.—No, it is not cross-examination; if you object to it on that ground, the objection is good.

Q. Will you examine that and state whether or not that is your signature? (Hands paper to witness.)

A. Part of it is rubbed out, but it looks like my signature, all right.

Q. Examine it closely?

A. I believe that is my signature; yes.

Mr. GOODWIN.—If your Honor please, we will offer this card, which is a receipt, and will follow it up by testimony later on, showing it is the receipt, in Mr.

(Testimony of Frank Golden.)

Golden's handwriting, of a registered letter to him, which Doctor Porter sent, enclosing a certain copy.

(Registry receipt marked Complainants' Exhibit No. 14.)

Mr. METSON.—It is not cross-examination, but I will not object to it.

Mr. GOODWIN.—I understand you will not object on the ground it is not cross-examination?

Mr. METSON.—I do not object to that on the ground it is not cross-examination, but I want you to confine your cross-examination to my direct; that is the point I make.

Q. Who was with you when you went up and examined that post? A. I was all alone.

Q. You had heard of the Dave Lewis Hope claim there at that time? A. Yes.

Q. Did you examine the notice? A. Yes.

Q. When that work was done, did you examine to see whether or not it was within the boundaries of the Dave Lewis Hope? A. When that work was done?

Q. Yes?

A. No, I just looked at the notice; I didn't make any special examination right then; when I was up there on the hill that day,

Q. Mr. METSON.—Was that work done within the boundaries of the Dave Lewis Hope? A. No.

(Testimony of Frank Golden.)

Q. (Mr. GOODWIN.) You are sure that it was not done within the boundaries of the Dave Lewis Hope?

A. I think so, yes.

Q. Where were the boundaries of the Dave Lewis Hope; where was the north corner, the northwest corner, the southeast corner, and the southwest corner?

A. Well, that is, I considered that work was—

Q. Never mind what you considered; tell me where the northeast, northwest, southeast, and southwest corner of the Dave Lewis Hope was?

A. I never knew any corners that he had, only this location; that is the only monument I ever seen him have only this location; that is the only monument I ever seen him have; the next monument I ever seen was one Doctor Porter put on there.

Q. You saw the monuments that Doctor Porter put on there? A. Some of them, yes.

Q. Didn't you see all of them? A. No.

Q. How many of them did you see?

A. Well, I seen them two monuments that is over there; one monument that is over close to the other side of the Belmont shaft, and another perhaps up the mountain.

Q. Didn't you see what was marked on the south center? A. Well, I never noticed.

Q. Didn't you see the three posts that marked the south end of the claim, the Mizpah Intersection or Dave Lewis Hope; the three posts that would mark the south

(Testimony of Frank Golden.)

end line, two of them being corners, and the other a center post?

A. I noticed a post there, but never paid any attention to it; we never paid much attention to them posts at all going up that hill.

Q. You saw a post just above that cut?

A. I saw a post going along there, just seen the posts, and I was walking with somebody going around the hill, and I asked what the posts were, and they told me those posts was being put up by Mr. Porter.

Q. Marked Mizpah Intersection or Dave Lewis Hope?

A. We didn't notice what marks was on them.

Q. You knew there at that time, didn't you, that the posts Doctor Porter claims were put up there about the 17th of May, were actually put up by him at the places that he claims to have put them up; you know that to be a fact, don't you?

A. Yes; we know that he put up posts there.

Q. Don't you know that the posts he put up there marked out a claim 1,500 feet long and 600 feet wide?

A. Well, I don't know; I never examined.

Q. Practically, I don't mean to an exact foot, but practically marked out the claim to that size?

A. I presume that is what they did mean.

Q. Don't you know this cut that you saw up there on the mountain would be near the center line of that claim?

A. No.

Q. Near the center line, I mean?

A. No, that could not be near the center line.

(Testimony of Frank Golden.)

Q. Well, close to it?

A. Not where you start in on that hog's back.

Q. We will lose sight of that post; I am speaking now of the post that Doctor Porter put up there, and taking off the discovery post, that post that was 300 feet north and a little west of the North Star shaft; you saw a post there after Doctor Porter put it up, didn't you?

Mr. METSON.—You are assuming too much, and it is apt to confuse the witness, and I object to the assumptions. If he will take something there, I will not object.

Mr. GOODWIN.—If there is anything conceded in this case, it seems to me those two things are.

The COURT.—I guess they are, the North Star shaft and the cut.

A. This Porter location was entirely to the east; that is, what we call the center of the location must be entirely to the east of the North Star shaft.

Q. Didn't the Porter location as marked out there by Mr. Porter in May, didn't that include the North Star shaft?

A. I don't think so; the Porter location goes to the east of the North Star shaft.

Q. The center line may be a little east of it?

A. The center line must be of course.

Mr. METSON.—Counsel assumed a moment ago, in one of his questions, that Doctor Porter put up a discovery monument near the North Star shaft; I don't think that

(Testimony of Frank Golden.)

he means that, and I do not like the witness to be bound by that kind of question.

The COURT.—It is not understood that the witness is bound by the statement of counsel, and it will not be considered as testimony by the Court.

Q. Along in May didn't you know of a post which was marked as a discovery post of the Mizpah Intersection or Dave Lewis Hope, which was situated about 300 feet north and west of the North Star shaft?

A. I know the discovery post of Dave Lewis on top of Oddie Mountain.

Q. Don't you know of a discovery post marked the Mizpah Intersection or Dave Lewis Hope, that was about 300 feet north or west?

A. That is the only discovery post I ever seen up there the old Dave Lewis post, the monument or point of discovery there.

Q. That is the only one? A. Yes.

Q. You don't know any more about where the lines of the Mizpah Intersection are than the lines of the Dave Lewis Hope?

A. I never seen any lines of the Dave Lewis Hope, never could find any monuments there; the only thing I ever seen was this discovery monument on the top of the mountain, at any time that I have ever been over the hill.

Q. You heard Mr. McCune's testimony, he testified that there was a monument that Dave Lewis took him to about 300 feet north and west of this cut?

(Testimony of Frank Golden.)

Mr. METSON.—I don't recollect Mr. McCune's testimony that way, and object to it as not being correct, and on the ground that it may confuse the witness.

The COURT.—I think Mr. Golden understands; he is not testifying to what some other witness said; he testifies to his own knowledge and nothing else; what you know, and not what somebody else may have said.

A. The only post I have ever examined very much up there was the Ivanpah, and the North Star tunnel, and I have been several times up to this point of discovery of the Dave Lewis Hope; but whatever has been done afterwards, I never paid much attention to it; the balance of our partners in the North Star tunnel, they used to look after all that part of it; my part of it was to look after the workings of the North Star tunnel, and I didn't have much to do with anything else.

Q. Now, as a representative of the North Star Tunnel Company, didn't you have Mr. Davis make a trade with Lewis for the Dave Lewis Hope claim? A. Never.

Q. Didn't you authorize him to pay a hundred dollars in cash, and give him 5,000 shares of North Star stock?

A. Never.

Q. Did you hear Mr. Davis's testimony here a little while ago? A. I did.

Q. What is that transaction, then?

A. Well, I will have to start at the commencement of it, with that matter; can I commence at the transaction from the start, how Lewis got that money and that stock?

(Testimony of Frank Golden.)

Q. Well, you have answered the question.

Mr. METSON.—He has asked for the transaction, and I think Mr. Golden is entitled to go ahead and answer the question.

The COURT.—You are taking a good deal of time on outside matters that are not going to figure in the case.

Mr. GOODWIN.—I will withdraw the question.

A. I would like to answer it.

Q. I will withdraw the question.

A. I will put it very plainly to you.

Mr. GOODWIN.—We may be making Mr. Golden our witness for this particular purpose.

Mr. METSON.—We have no objection if it is competent; we want the Court to know the facts.

Q. As president of the company did you receive a notice along about the 10th, 11th or 12th day of June, some time along there, signed by Mr. Porter, notifying you that the work that was being done there at the North Star shaft was trespass work?

A. I never remember seeing it.

Q. Did you learn as president?

A. I received letters from Mr. Jury, I remember, and Mr. Chandler, personal letters, in regard to their interest in that property, but outside of that, they are the only letters that I remember getting.

Q. Don't you recollect about the time that you started work there, that it was reported to you that Mr. Porter

(Testimony of Frank Golden.)

went up there with two witnesses and read to your foreman a trespass notice, and tacked a copy of it up on the building that you had there, a little shack?

A. Somebody went up there and read it to our foreman and me?

Q. Not to you, but to your foreman in charge of the men there, and tacked a copy of it up on the building, and shortly afterwards didn't you receive one through the mail?

A. I have never seen a copy of it, and my foreman has never told me anything about it.

Q. And you never heard of it until you got here in court?

A. Never have heard of it until I got in court.

Q. That is the fact, is it?

A. That is the fact, sir.

Mr. GOODWIN.—I don't know, your Honor; I am informed by Mr. Porter that he went up there, and in the presence of Mr. Booth, Mr. Egan and Mr. Lewis, did what I state here, what I have indicated by my questions; that he enclosed a copy of that notice of trespass to Mr. Golden in a registered letter, and got back his registry receipt for it.

Mr. METSON.—I don't see that it is pertinent or proper, that is the objection.

Mr. GOODWIN.—I would take time to get some—either my witnesses, your Honor, or some witness on the other side.

(Testimony of Frank Golden.)

WITNESS.—Who would that letter be addressed to, may I ask?

Q. It was addressed to the secretary of your company, and the receipt for that letter came back signed by you?

A. May I explain that thing to you?

Q. That is what I want, simply to get at the facts; Doctor Porter is lying to me, or else you are mistaken?

A. That letter might come and I receipt for it, and if it was for the North Star Tunnel Company, I would not open it or know anything about it.

Q. Don't you know of this transaction?

A. I do not, and never knew it in my life.

Mr. GOODWIN.—I would like time, your Honor, to get Mr. Egan or that other witness here.

The COURT.—You will have to pursue your own course in the matter, whatever steps you are going to take about it.

Mr. METSON.—I would like to introduce this paper. It is admitted, I understand, by counsel, that the defendant is a corporation, duly organized under the laws of this state, and that the title of Mr. Ish in the Ivanpah was duly and regularly conveyed to the corporation by deed of record.

Mr. GOODWIN.—I think whatever right and title he had passes.

Mr. METSON.—This is the additional certificate of lo-

(Testimony of Frank Golden.)

cation, and I ask to have it admitted in evidence and considered as read.

Mr. GOODWIN.—We object to it generally on the ground it is not sufficient, and not within the statutes.

(Additional and amended certificate of Ivanpah claim admitted and marked Defendant's Exhibit "E.")

Mr. METSON.—We introduce this printed application for patent and certificate of O. H. Gallup as register, without objection on either side, and it may be considered as read.

(Paper marked Defendants' Exhibit "F.")

Mr. METSON.—I will introduce now a certified copy of the amended and additional certificate of location of the Mizpah Intersection, and on this certified copy are some lead pencil marks or memoranda that I put there, and it is understood that the lead pencil memoranda are no part of the record, and were put there by me when I was comparing the reading with Doctor Porter.

The COURT.—Let the record so show.

(Paper marked Defendants' Exhibit "G.")

Mr. METSON.—We offer now a certified copy from the County Recorder of the Ivanpah, showing the filing of the papers.

(Abstract of title Ivanpah Mining Claim marked Defendants' Exhibit "H".)

Mr. GOODWIN.—That there may be no confusion, your Honor, they have offered a certificate of location; now

(Testimony of Frank Golden.)

they offer a certified copy of their notice of location; and if your Honor will examine the two, you will see they are identical, except one has "Certificate of Location" written across the top, but the certificate of the recorder is that it is a certified copy of the Notice of Location. They are both the same instrument.

Mr. METSON.—I think they are, but we do not concede the proposition.

The COURT.—Let them go in. One is called a certificate of location, and the other a notice of location, but they are both the same instrument, or substantially the same.

Mr. METSON.—I think it is correct, but I do not want to admit it.

Mr. GOODWIN.—What I mean is this: There is only one record, and that record is what is certified to here as being the notice of location, and also as a certificate of location, and it is just the one record. That is the fact, is it not?

Mr. METSON.—Well, we think so.

The COURT.—They do not admit that, but the record will show, and the witness who testified on the stand, in testifying to it said, that there was but the one paper. When the controversy came up whether it was a certificate or notice of location, he testified that there was but the one paper, so far as he was concerned, that was filed; they

(Testimony of H. Ramsey.)

have two, but whether they are the same or not can be readily determined.

Recess until 1:30 P. M.

After Recess.

Mr. H. RAMSEY, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. As I understand it, to make this matter short, you were in Tonopah in 1901? A. Yes, sir.

Q. And about the first of January, 1902, you went out of business, and didn't do much of anything about Tonopah or Tonopah affairs until when?

A. Well, I don't know, I think it might have been later than 1902, I don't know, I don't think I was there much during the year 1902.

Q. That is when you were taken sick, the first of January, along about then?

A. Yes, about the 15th of January, taken sick, but I wasn't there after the first of January, I was in Silver Peak.

Q. Now, Mr. Ramsey, you have heard the testimony with reference to a certain cut being excavated near where the North Star main shaft is now? A. Yes.

Q. Tell the Court whether or not that cut had been excavated prior to the first of January, 1902?

A. It had not.

Q. You have heard some testimony with reference to a

(Testimony of H. Ramsey.)

monument or notice of location of the Dave Lewis Hope, alluded to on one side as the location monument of the Dave Lewis Hope; state whether or not you have ever seen any monument with a Dave Lewis Hope location notice in it? A. I did.

Q. Where?

A. Up near the apex of Oddie Mountain.

Q. How far below the apex vertically?

A. I should judge it would be about 250 feet west of the apex of Oddie Mountain.

Q. Was the monument higher or lower than the top of the mountain?

A. A little lower than the top of the mountain.

Q. About how low?

A. I could not say as to that, the mountain came up this way, and the monument would be down a little ways.

Q. About what difference would there be, approximately?

A. I could not say as to that; from the apex down would be like that, and the monument would be down here.

(Indicating.)

Q. Give us your idea; would it be ten feet or a hundred, or between?

The COURT.—Ten feet or a hundred feet lower than the apex or highest point.

A. It could not be a hundred feet, I don't think; it is a very hard thing to get at.

Q. Your judgment, that is all.

(Testimony of H. Ramsey.)

A. You mean how much higher the apex of the mountain would be then the top of the monument?

The COURT.—Than the top, where the monument was placed?

A. Well, put it 25 feet, it might be more and might be less.

Q. What distance from the top of the mountain to the monument?

A. From the apex?

Q. Yes, sir?

A. I should judge about 250 feet; 40 or 50 feet, along there some place.

Q. And what direction? A. West.

Q. West from the apex of the mountain? A. Yes.

Q. Now, with reference to its being in a valley or a draw or canyon, or a ridge, where was the monument?

A. That monument?

Q. Yes, sir?

A. Well, it was kind of on the back bone, came down over the apex of the mountain.

Q. Now describe the monument?

A. The monument was a 4 by 4, I think, scantling in a rock; the post was a 4 by 4 in a rock monument.

Q. About how high was the monument?

A. I don't know *how* large, about four feet maybe.

Q. And about what diameter was the base, the width?

A. Well, two or three feet.

(Testimony of H. Ramsey.)

Q. What was marked on the post, this scantling, if anything? A. I didn't see any mark on the post.

Q. Did you see any marks in the monument that you remember?

A. There was a little can in the monument with a notice in it.

Q. Tell us what the notice said?

A. Well, I just glanced over the notice, and it read, claiming 500 feet in a northwesterly direction, I think, and a thousand feet in a southeasterly direction, and 300 feet on each side.

Q. What names were signed to it, if any names?

A. Carr and Lewis's names were signed to it.

Q. What was the date, if any date?

A. The 26th of August, 1901.

Q. And did they give the mine a name?

A. Dave Lewis Hope.

Q. Now do you know where the monuments of the North Star Tunnel were? A. Yes, sir.

Q. With reference to this Dave Lewis Hope monument that you have testified to, where were the monuments fixing the line of the tunnel, of the North Star tunnel?

A. Well, this Dave Lewis Hope monument was, I should judge about three or four hundred feet from that.

Q. Which way?

A. Up towards the apex of the mountain, in an easterly direction, I should judge.

Q. How many times did you see that monument that

(Testimony of H. Ramsey.)

you have designated as having a notice of location of the Dave Lewis Hope claim in?

A. I don't know how many times; I have seen it several times in the fall of 1902; I don't remember how many times, don't remember exactly the dates I was there; I remember seeing it that fall, though.

Q. Do you remember having been up on that mountain at any time with Mr. Curtis? A. Yes.

Q. Was this cut that has been testified to by the complainant in this case, was that there at that time?

A. It was not.

Q. How do you know?

A. Well, I know because we were right in the particular spot; sat down there for a while, probably half an hour we sat there and talked, Mr. Curtis and Mr. Salesberry and myself.

Q. Was there any digging, or use of a pick there at that time?

A. I didn't notice any digging at all.

Q. Did any of your party do any digging there at that time?

Q. I did a little digging with a pick; went around and made a little hole a few inches deep.

Q. What were you digging on, if anything?

A. We were sitting on the ground there, and a kind of streak ran down there, I dug down and dug out some black looking stuff, manganese, that is about all.

Q. When did you last see that monument that was

(Testimony of H. Ramsey.)

there, that you designate as having the notice of location in? A. The last time I seen it?

Q. Yes, sir?

A. I think it was on the 7th of this month.

Q. 7th day of July, 1904? A. Yes, sir.

Q. About what time?

A. Well, I think it was either the 7th or 8th; I think it must have been the 7th, because we started up here on the night of the 8th; I think it was on the 7th.

Q. Was it in the same place that you first saw it, when you saw it on the 7th of July, 1904?

A. Yes, sir; it was in the same identical place.

Cross-examination.

Q. In preparing for this trial, Mr. Ramsey, why didn't you have a survey made locating exactly that state? A. We did.

Q. You did? A. Yes, sir.

Q. Is the surveyor that made it here?

A. Yes, sir.

Mr. GOODWIN.—Have you a survey of that, Mr. Metson?

Mr. METSON.—No, we have no survey.

Q. Did you see other posts or monuments there marking the Dave Lewis Hope at anytime?

A. I did not.

Q. Never mind any posts or monuments there marked Dave Lewis Hope? A. Only that one.

(Testimony of H. Ramsey.)

Q. That is the only one? A. Yes, sir.

Q. Did you ever see any marked Mizpah Intersection, or Dave Lewis Hope? A. No, sir.

Q. You never did? A. No, sir.

Q. Did you hear of Doctor Porter's being on the ground there at any time along during May?

A. I did not; I heard of his being in the camp, that is all.

Q. Were you there at the time, or was that when you were away?

A. I think I was away at that time; I am not quite sure; I am inclined to think I was away at that time.

Q. Didn't you hear about some stakes that he put up there?

A. No, sir, I never heard of any stakes that Mr. Porter put up.

Q. Did you hear of any stakes being put up there marking what we claim as the Dave Lewis Hope?

A. Did I ever hear of any?

Q. Yes.

A. Yes, I have heard of some stakes that was marked Mizpah Intersection, or something like that.

Q. Didn't you ever go and examine them?

A. Never did.

Q. Don't know where they were? A. No, sir.

Q. Never looked for them? A. Never did.

Q. And really don't know anything about them?

A. Only what I heard.

Q. Only just what you heard? A. Yes.

(Testimony of H. Ramsey.)

Q. Did you ever hear about a stake or monument, just a little west of north about 300 feet above the cut you are referring to?

Mr. METSON.—We object to what he heard; just ask what he saw.

Q. Well, did you ever examine at a point about 300 feet north and west of the cut?

A. I never examined particularly to hunt up a stake of that kind; I have been along that course there a good many times, and never seen a stake of that description.

Q. You never saw any stake there?

A. No, sir.

Q. Did you ever see any stake down on that same course, down near the line of the Mizpah ground, which marked the center line of the Mizpah Intersection?

A. Never did.

Q. Do you know of some surveyors going up there to make a survey of that claim at any time?

A. No, sir.

Q. Didn't you and some of the parties in possession there prevent a survey being made at one time?

A. Did not.

Q. You are sure of that? A. I am sure.

Q. Didn't you and some of the company keep Mr. Booker from making a survey there at one time, or his men from making a survey? A. I did not.

Q. Didn't the company?

(Testimony of H. Ramsey.)

A. I don't know anything about what the company did, I never heard anything about it.

Q. Don't you know that in January, maybe the specific date might refresh your memory, January 7th, 1903, that the company prevented Mr. Booker's men from making a survey there?

A. I thought you had reference to an earlier date than that?

A. No, January 7th, 1903?

A. Why, Mr. Booker, if I understand right, got a telegram from a gentleman sitting over there (indicating), a man named Duryee, to go up there and survey, and he got permission from us.

Q. Now, just confine yourself to January 7th?

A. I could not say the date, I don't remember exactly, I don't remember the date; that is something I cannot remember.

Q. You don't keep track of dates?

A. No, sir.

Q. Now, don't you recollect hearing of Mr. Shoots, who was in the employ of Mr. Booker, being up there about January 7th to make a survey?

A. I didn't hear anything about it.

Q. You never heard of it?

A. No, sir; what date was that?

Q. I think it was January 7th, 1903?

A. I don't know anything about it.

(Testimony of H. Ramsey.)

Redirect Examination.

Q. State whether or not you, on behalf of the North Star Tunnel Company, or anyone to your knowledge, your own personal knowledge, consented that Mr. Booker should make a survey for these gentlemen on the other side? A. Would I consent to it?

Q. Did Mr. Booker come to you and request you and ask you if he could make a survey of this Dave Lewis Hope or Mizpah Intersection?

A. On the telegram that he received from San Francisco.

Q. On a telegram from Mr. Duryee?

A. I did give him permission, told Mr. Pittman to let him go on the ground.

Recross-examination.

Q. Prior to that had not you forbade their going on the ground?

A. No, sir; I did not; never had any occasion to forbid anybody from going on the ground.

Mr. J. G. BOOKER, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Booker, are you a United States Deputy Mineral Surveyor? A. Yes, sir.

Q. And were you in the year 1903? A. Yes, sir.

Q. State whether or not on behalf of Doctor Porter

(Testimony of J. G. Booker.)

and others you made an application to Mr. Pittman, or Mr. Ramsey, or anybody else, for permission to go upon the Ivanpah ground, or the North Star ground, and make a survey or surveys of the so-called Dave Lewis Hope or Mizpah Intersection claim? A. I did.

Q. Did they or did they not grant or refuse the request?

A. Granted permission to make the survey.

Q. Did you or not communicate the granting of the request to Doctor Porter and others?

A. No, sir, not to Doctor Porter.

Q. To whom? A. To Schuyler Duryee.

Q. Can you state the date, about when this was done?

A. I think it was in the early part of October, 1903.

Cross-examination.

Q. Previous to that time had you attempted to make a survey for Mr. Duryee, or any of the parties plaintiff, on that ground?

A. Men working for us had attempted to make a survey for Doctor Porter.

Mr. METSON.—What you know, and nothing else.

The COURT.—What you know; don't tell what anyone told you.

A. I don't know anything about it.

Q. Didn't they employ you to make a survey, and

(Testimony of J. G. Booker.)

didn't you send out a man to do it, and were not you prevented in making that survey?

A. I received an application—

Mr. METSON.—I object to that.

The COURT.—Well, I would like to get at the fact.

Mr. METSON.—I withdraw the objection; let him tell all that he has heard.

A. In the month of January, 1903, I was in attendance upon this court; Mr. Bradford was away; Lester Bell was employed in our office as head man; Elmer Shoot was employed as surveyor; Lester Bell wrote a letter while I was in Carson and said he had sent Shoot out to make a survey of the Dave Lewis Hope mining claim, and was prevented from so doing.

Q. Did he say by whom he was prevented?

A. I think that he did.

Q. Do you know by whom?

A. No, not all the names of the parties.

Q. But you understood he was prevented by—

Mr. METSON.—I object to what he understood.

Q. Was it the defendant in this action, the North Star Tunnel Company?

A. Yes, sir; in power of the North Star at that time.

Q. Are you not mistaken, wasn't it later than early in October; wasn't it along about the 28th of October, that that request was granted?

A. No, I think not; that is very early after I received the wire from Schuyler Duryee, asking for the price of

(Testimony of J. G. Booker.)

a survey of that claim, and according to my recollection that wire was received by me early in October.

Q. As soon as you got that permission, you wrote him, didn't you?

A. I think I wired him I might have written, and I think I did write.

Q. If you wrote him, and that letter was dated October 28th, 1903, could you fix the date from that?

Mr. METSON.—We object to that, if he did so and so, it is assuming facts.

The COURT.—All you want to do is to fix the date?

Mr. GOODWIN.—That is all; I do not want to read this letter in evidence, but there is a letter from Mr. Booker to us dated the 28th of October, in which he states that permission is granted. (Shows letter to witness.)

A. Yes, that seems to be dated the 28th; very likely it is the 28th.

Q. Now, would you want to change your testimony in the record after seeing that letter?

A. Well, I think so; yes.

Redirect Examination.

Q. How soon after the wire from Mr. Duryee did you make application, and it was granted, Mr. Booker?

A. Well, I think it was very soon; not longer than three or four days, if that long, because I was very anxious to have the thing settled, and go ahead with the work.

(Testimony of J. G. Booker.)

Q. As soon as you got the wire from Schuyler Duryee, did you or not, bring it to Mr. Pittman and get permission, and make immediate reply?

A. No, I wired him once or more before I went to Mr. Pittman.

(By Mr. GOODWIN.)

Q. Now look at that telegram and see if that is the telegram you sent to Mr. Duryee? (Hands telegram to witness.)

A. That is the one.

Mr. GOODWIN.—If your Honor please, we will offer this in evidence for the purpose of fixing the date, that is all.

Complainants' Exhibit No. 15.

Tonopah, Nev. Oct. 27/03.

Schuyler Duryee, Grand Hotel, San Fran.

If adverse survey desired send Marshal to protect surveyor and some person to identify ground. Charges one hundred five dollars.

BOOKER & BRADFORD.

(Marked Complainants' Exhibit No. 15.)

Q. Now, if you got permission, it must have been after the 27th, wasn't it?

A. If the date of that thing is correct, yes.

Mr. METSON.—Now give us the one granting permission, please?

Mr. GOODWIN.—There was no telegram granting permission, Mr. Duryee says.

(Testimony of J. G. Booker.)

(By Mr. METSON.)

Q. Did you, or not, telegraph as soon as permission was granted?

A. Well, I am not positive about that; I perhaps wrote them; I wrote them several times; what the substance of those letters was, I have forgotten, since the copy-book was burned.

Q. You spoke of a surveyor going upon this ground, was he a Deputy United States Mineral Surveyor?

A. No, sir.

Q. A surveyor employed as a subordinate under who, in your office?

A. He was then under Lester Bell, who was then in charge of our office.

Q. All that you know about it is what Mr. Lester Bell wrote you, as to report made by him to Lester Bell?

A. That is all.

Q. Now, didn't Lester Bell report to you that the trouble was upon the survey of the Favorite, and that they were the ones that prevented the survey?

A. No, sir, the Favorite does not touch any portion of that claim to my knowledge, I don't think it was the Favorite, because he would have nothing to do with the Favorite.

Recross-examination.

Q. Now the Favorite lays where, with reference to the top of Mount Oddie, the summit of Mount Oddie?

A. That comes over this side of the summit a short distance, I could not state how far.

(Testimony of J. G. Booker.)

Q. Well, don't it come over west and south a little, of the summit? A. A little way, very little.

Q. Would a post within, say from 250 feet west of the summit of Mount Oddie, be on the Favorite?

A. No.

Q. It would not? A. No, sir.

Q. How far over would it come?

A. I could not say how far it would come over the mountain, but it does not come very much; I think the end line runs pretty nearly over the end of the summit.

Q. Counsel asked you if you didn't understand that this Dave Lewis Hope conflicted, or the survey was stopped, because it conflicted with the Favorite?

Mr. METSON.—No, I did not; I asked if the Favorite had not prevented this surveyor from doing this work.

Q. You don't understand that the Dave Lewis Hope interfered in any way with the Favorite, do you?

Mr. METSON.—I object to what he understands, and it is not cross-examination.

A. Well, the Favorite was surveyed, I surveyed it myself before I came over here that time; it didn't require any further survey.

Q. Mr. Booker, have you made a map of Mount Oddie and the claims in that locality and neighborhood?

A. Yes.

Q. Does the summit of Mount Oddie as represented on that plat bear a correct relation to the claims surrounding it?

(Testimony of J. G. Booker.)

Mr. METSON.—I object to that as not cross-examination and that plat is not identified.

The COURT.—He is asking for his own information, not about the testimony in the case.

Mr. GOODWIN.—It is just for my own information, is the reason I ask the question preliminary.

A. Approximately correct.

Q. Well, on that plat does not the Favorite lie entirely west of the summit? A. No, sir.

Q. It does not? A. No.

Mr. METSON.—We would like to introduce these patents, if you have no objection. Patents of the Montana Tonopah and Triangle, showing these exclusions.

Mr. GOODWIN.—The exclusion you allege in your pleading?

Mr. METSON.—Yes.

Mr. GOODWIN.—We have no objection for that purpose.

Mr. METSON.—They may be considered as being read in evidence, and we ask leave to withdraw them, after leaving certified copies. (“Lucky Jim” patent marked Defendants’ Exhibit “I”; “Triangle Lode patent” marked Defendants’ Exhibit “J.”)

Mr. METSON.—I understand it is admitted that we are a corporation, and entitled to locate and hold mines,

(Testimony of J. G. Booker.)

and incorporate them, and everything of that sort; the purposes are broad.

Mr. GOODWIN.—We alleged it, and you have admitted it.

(It is admitted that Mr. Bradford was a United States Deputy Mineral Surveyor.)

Mr. METSON.—Do you want to put Mr. Davis back on the stand in regard to those books?

Mr. GOODWIN.—There are some entries of 3 by 4 that we have found.

Mr. METSON.—Mr. Davis is not here, but we will read them into the record. On top of page 159, there seems to be one piece of 3 by 4 by 16.

Mr. GOODWIN.—Those are between August 7th and September 12th.

Mr. METSON.—That last is under date of August 27th, charged to Coslett, Stauts & Company. Page 264, under date of September 8th, charging Brougner Brothers with four pieces 3 by 4 by 16.

Mr. GOODWIN.—That is all that was found in that book. Now from September 12th to October 12th.

Mr. METSON.—Page 36 under date of September 16th, to Brown & Cutting, 15 pieces 3 by 4 by 16. Under date of the 16th to Kilpatrick, one piece of 3 by 4 by 8, and one 3 by 4 by 16. September 16th, 1901, one piece of 3 by 4 by 16, to Coslett, Stauts & Company.

(Testimony of J. G. Booker.)

Page 82, September 21, to Coslett, Stauts & Company, one piece 3 by 4 by 16; September 21st, Tonopah Company, three pieces 3 by 4 by 16; Charles Cheney, two pieces 3 by 4 by 16. September 23d, three pieces 3 by 4 by 16. A. C. Cary, one piece 3 by 4 by 16, to the Tonopah Tunnel Company.

Mr. GOODWIN.—It simply shows that there were sales made.

Defendant rests.

REBUTTAL.

Doctor JEROME P. PORTER, called in rebuttal, testified as follows:

Direct Examination by Mr. GOODWIN.

Q. In the fore part of June, 1902, did you serve any writing upon any persons that were on the Dave Lewis Hope claim, as you understood it? A. I did.

Q. Where were these people with reference to the cut you testified to, and with reference to the present North Star shaft?

A. They were right at the North Star shaft.

Q. Who were there?

A. Well, there were a number of workmen, I think five or six.

Q. Was there anyone in charge?

A. There was one man pointed out to me as the boss of the men.

(Testimony of Dr. Jerome P. Porter.)

Q. Now, how did you happen to be there at that time?

Mr. METSON.—We will object to that; if he did serve a paper, let it go at that, and the contents of the paper.

The COURT.—It must be in rebuttal; I don't suppose you want to enlarge upon it; it is the fact, if he did, and if so, upon whom, and where.

Mr. METSON.—We will admit that he served it upon a duly authorized agent of the North Star Tunnel Company, and it is in the words and figures of the adverse.

Mr. GOODWIN.—We will accept the admission that at that time this notice I hold in my hand was served on a duly authorized agent of the North Star Tunnel Company.

Mr. METSON.—Some agent of the tunnel company, but none of these witnesses; a duly authorized agent. In other words, we do not want to agree that our witnesses did not tell just exactly the facts. We admit that a duly authorized agent of the defendant received a notice as set forth in your adverse in the words and figures there stated, and that it was none of the people who have been on the stand on our side.

Mr. GOODWIN.—I do not accept that, because we sent it to the secretary of the North Star Company, and got back the receipt of Mr. Golden, to the letter, and Mr. Golden denies it.

(Testimony of Dr. Jerome P. Porter.)

The COURT.—They make that offer, and admit it, and it seems to me that covers the ground, and avoids all of the testimony in regard to it, or any conflict there may be. The admission is broad enough, that it was an authorized agent, and is certainly as good as the proof, and that does away with any evidence.

Q. (Mr. GOODWIN.) Doctor Porter, is that a copy of the notice that they have admitted was signed—that is you admit, Mr. Metson, that this is a copy of the notice that was signed?

Mr. METSON.—No, I have not made any admission about that. I am speaking about what is in evidence in your adverse. You have set out, as I understand, what you claim to be a copy of what you served.

Q. (Mr. GOODWIN.) This is a copy of that, the same thing?

A. Yes, sir; a copy of what I served.

Mr. GOODWIN.—If it is not the same thing, I will ask the court to strike it out, when it is discovered there is any difference. If it is not the same thing then the Court will strike it out.

The COURT.—Certainly, I would do that myself.

(Trespass notice marked Complainant's Exhibit No. 16.)

Mr. GOODWIN.—We offer in evidence the deed of D. R. Lewis to R. B. Davis, that was testified to as of the

(Testimony of Dr. Jerome P. Porter.)

28th day of June and acknowledged on the 30th day of June. I intended to offer it when Mr. Davis was on the stand. This is a certified copy, I believe.

(Deed marked Complainant's Exhibit No. 17.)

Mr. CHARLES J. CARR, called in rebuttal, testified as follows:

(By Mr. GOODWIN.)

Q. Mr. Carr, some of the witnesses have testified with reference to certain transactions alleged to have been done by you with reference to selling lots more than once in Tonopah, and a certain check transaction, and with the permission of the Court, I would like to have Mr. Carr explain those matters.

The COURT.—Is there any objection on the part of counsel?

Mr. METSON.—I do not think that would be rebuttal, and is objectionable.

Mr. GOODWIN.—It is clearly not legal rebuttal.

The COURT.—It is not legal rebuttal. It would not be testimony, would it, what you want would be the personal privilege of this man's making a statement in regard to certain facts.

Mr. GOODWIN.—That is the practical legal effect of it.

The COURT.—Of course, the general proposition, as

(Testimony of Charles J. Carr.)

I stated before, and admissible, is the general reputation in the community where a party resides. I see no objection to his making a statement if it is a personal matter but it is not legal testimony. It is in the nature of a personal privilege; a man's reputation has been attacked, and I suppose he ought to be allowed the personal privilege of explaining his general acts, but it would not change the testimony as to his reputation. It is not admissible, of course, and it cannot be considered as legal evidence. If admissible at all, it certainly would be as a personal privilege, that a man might make an explanation for himself, but it is a matter that could not be considered by the Court in any legal effect on the testimony.

Mr. GOODWIN.—If it would not be so considered, I do not want to take up the time of the Court. So far as the legal effect of it is concerned, I agree with your Honor, but in justification to Mr. Carr.

The COURT.—If it were anything that would affect my ruling on legal grounds, I would allow it in a minute, but it would simply be a matter personally with Mr. Carr, and would not have any effect on the issues involved in the case, and I think we had better leave it out.

Mr. GOODWIN.—I think that is all.

Mr. METSON.—Will your Honor pardon us a moment, I would like to recall Mr. Booker.

Mr. J. G. BOOKER, recalled by defendant, testified as follows:

Direct Examination by Mr. METSON.

Q. Mr. Booker, did you make a measurement for Mr. Ramsey from the top of Oddie Mountain to a monument on the ground? A. Yes, sir.

Q. Westerly? A. Yes.

Q. Can you give us the distance and course?

A. I do not think I can give the exact distance, or the course, because it was destroyed; approximately, it was between 200 and 250 feet northwesterly, general direction, more westerly than north.

Q. Now from point to point, to make it clear in the record, what do you mean, the monument is westerly and north, or the apex is westerly and north?

A. From the south of Oddie Mountain the monument is northwesterly between 200 and 250 feet from the summit.

Q. How was that monument marked?

A. There was a post that was marked "August 26th."

Q. Mr. GOODWIN.—The post was marked "August 26th"?

A. The post was marked "August 26th," the center line Lewis Hope; evidently there had been a word obliterated, which I could not make out, and besides those markings were, "Lewis and Carr"; I believe that was all.

(Testimony of J. G. Booker.)

Q. Mr. GOODWIN.—Lewis and Carr's name was on?

A. Lewis and Carr's name.

Q. Mr. METSON.—Mr. Booker, I understand that all your field-notes, and everything were burned up in the fire at Tonopah a short time ago, is that correct?

A. That is true.

Q. Did you make the survey of the Ivanpah for patent?

A. Yes.

Q. And put up the Ivanpah patent monuments?

A. I did.

Q. Taking the easterly side line of the Ivanpah as laid by you on the ground for patent in this matter, in this application, was or was not this monument west or east of the east side line of the Ivanpah?

A. It was east.

Q. About how far?

A. Well, I should judge from 150 to 200 feet.

Q. (Mr. GOODWIN.) When did you first see that stake, Mr. Booker?

A. I think it was in the latter part of October some time, 1903.

Q. 1903? A. Yes, sir.

Testimony closed.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Nevada. Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mary Thompson, Plaintiffs. v. Tonopah North

Star Tunnel and Development Company (a Corporation), Defendant. No. 771. Testimony. Garoutte & Goodwin, for Plaintiffs. Campbell, Metson & Campbell, Key Pittman and K. M. Jackson, for Defendant. Filed August 9th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 7.

ADVERSE CLAIM. No. 121. In the Matter of the Application of the TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY for Patent for the Ivanpah Mining Claim. U. S. Land Office, Carson City, Nevada. Filed Nov. 18, 1903. O. H. Gallup, Register. Filed by Schuyler Duryee, Grand Hotel, San Francisco, Calif.

IN THE UNITED STATES LAND OFFICE, CARSON CITY, NEVADA.

In the Matter of the Application of the Tonopah North Star Tunnel and Development Company, a corporation, for United States patent for the Ivanpah quartz mine, vein, lode, or mineral deposit, and the land and premises appertaining thereto, situated in the Tonopah Mining District, in the County of Nye, State of Nevada.

To the Register and Receiver, United States Land Office, Carson City, Nevada, and to the above-named applicant for patent for the said Ivanpah quartz mine, vein, lode or mineral deposit, and for the land and premises appertaining thereto.

You are hereby notified that Jerome P. Porter of Angels Camp, California; John G. Jury of San Francisco, California, Thomas W. Chandler, Charles J. Carr, and Mary Thompson, of Berkeley, California, all citizens of the United States and of the State of California, are the lawful owners and entitled to the possession of the said quartz mine, vein, lode or mineral deposit described in the application for United States patent aforesaid as the Ivanpah quartz mine, vein, lode or mineral deposit, as shown by the diagram posted on said claim and the copy thereof filed with said application in the Land Office at Carson City; and as such owners these contestants, the said Porter, Jury, Chandler, Carr and Thompson do protest against the issuing of a patent thereon to said application, and do dispute and contest the right of said applicant to a patent for the mine, vein, lode or mineral deposit described in the application for patent aforesaid.

And these contestants do present the nature of their adverse claim, and do fully set forth the same in the affidavit hereto attached, marked Exhibit "A," and the further exhibits attached thereto and made part of said affidavit.

That the said Porter, Jury, Chandler, Carr, and Thompson respectfully ask the said Register and Receiver, that all further proceedings on the application for patent aforesaid be stayed until the rights of these contestants shall have been settled or decided by a court of competent jurisdiction.

These contestants have duly appointed Schuyler

Duryee of the City of Everett, County of Snohomish, State of Washington, (but temporarily sojourning at the Grand Hotel, City of San Francisco, State of California), their Agent and Attorney in Fact, with full power to represent them in all matters arising from, and growing out of, this protest either before the United States Land Office or before the court that may have jurisdiction thereof.

Signed at San Francisco, California, this 14th day of November, 1903.

Witnesses: As to Porter, Floyd De Voe. Jerome P. Porter. Witness as to John G. Jury, L. H. Whipple. John G. Jury. Witness F. S. Kordt. Thos. W. Chandler. As to Carr, Floyd De Voe. Charles J. Carr. Witness as to Mrs. Mary Thompson, J. W. Cramer. Mrs. Mary Thompson.

Exhibit "A."

State of California,
City and County of San Francisco,—ss.

Charles J. Carr, for himself and on behalf of Jerome P. Porter, John G. Jury, Thomas W. Chandler, and Mary Thompson, co-owners with him in the Dave Lewis Hope Mining Claim (otherwise known as Mizpah Intersection) situated in Tonopah Mining District, County of Nye, State of Nevada, being first duly sworn according to law, deposes and says: That the said Porter, Jury, Chandler, Thompson, and affiant are citizens of the United States and of the State of California; that they are the contestants and protestants named in, and who subscribed the notice and protest hereto prefixed; that

they are the owners by purchase or location of the lode or vein of quartz or other rock in place, bearing gold, silver, and other metals shown and described in the application for United States patent filed by the Tonopah North Star Tunnel and Development Company, in the United States Land Office at Carson City, Nevada, in which application said lode or vein is named the Ivanpah quartz mine, vein, lode or mineral deposit; that the said lode or vein is situated in the Tonopah Mining District, County of Nye, State of Nevada.

This affiant further says: That on the day of location the premises hereinafter described were mineral lands of the public domain, and entirely vacant and unoccupied, and were not owned, held or claimed by any person or persons as mining ground or otherwise, and that while the same were so vacant and unoccupied, and unclaimed, to wit: On the twenty-sixth day of August, 1901, Dave R. Lewis and Charles J. Carr (the affiant), each and both of them being citizens of the United States, entered upon and explored the premises, discovered and located the lode or vein and premises embraced in the application for United States patent by the Tonopah North Star Tunnel and Development Company, and occupied the same as a mining claim; that the said premises so located and appropriated consisted of one thousand (1000) feet running in a southeasterly direction, and five hundred (500) feet running in a northwesterly direction from the point of discovery, with three hundred (300) feet on each side of the vein, as will fully appear by reference to the Notice of Lo-

cation, a duly certified copy whereof is hereto annexed, marked Exhibit "B," and hereby made a part of this affidavit; that said claim at the time of its location was named by the said locators Lewis and Carr the "Dave Lewis Hope"; that the locators after the discovery of the said mineral lode or vein, drove a stake on said lode on the discovery claim, erected a monument of stone and earth around said stake, and placed thereon a written Notice of Location, describing the claim so located and appropriated, giving the names of the locators and quantity taken by each; that the said locators did all the acts and performed all the labor required by the mining laws of the United States, and the laws and regulations of the said Tonopah Mining District, and State of Nevada; that the locators of said lode or vein, named the "Dave Lewis Hope," caused said Notice of Location to be duly recorded in the Recorder's office in said Tonopah Mining District, Nye County, Nevada, in Book "B" records of said District at page 119 thereof, and in the Recorder's office of Nye County, State of Nevada, in Book "E" of mining locations, pages 123-124.

And this affiant further says: That on or about the seventeenth day of May, 1902, Jerome P. Porter, one of the owners aforementioned, filed an additional and amended certificate of location of the said "Dave Lewis Hope" claim and changed the name thereof to "Mizpah Intersection"; that at the time of filing said additional and amended certificate of location the said claim was duly surveyed and posts set at prescribed points on the boundaries as fully appear in the additional and amended

certificate of location, a duly certified copy whereof is hereto annexed, marked exhibit "C," and hereby made a part of this affidavit; that the said boundaries as set forth in the additional and amended certificate of location conform to the boundaries of the original location; that said additional and amended certificate of location was recorded in the recorder's office in said Tonopah Mining District, County of Nye, State of Nevada, in book "C," records of said District, at pages 394, 395, and in the County Recorder's office of Nye County, State of Nevada, in book "E" of mining location, at pages 141, 142; that the said locators and their grantees, in all respects, complied with every custom, rule, regulation, requirement of the mining laws, and every rule and custom established and in force in said Tonopah Mining District, and thereby became and were owners (except as against the paramount title of the United States) and the rightful possessors of said mining claim and premises, and have continued as owners and are now owners by complying with the requirements of the statutes of the United States and of the State of Nevada.

And this affiant further says: That after the filing of the additional and amended certificate of location as aforesaid, the said Tonopah North Star Tunnel and Development Company, by and through its agents and employees, took forcible possession of said mining claim and premises and proceeded to sink a shaft thereon; that on or about the tenth day of June, 1902, the aforesaid Jerome P. Porter served or caused to be served upon the said Tonopah North Star Tunnel and Develop-

ment Company a notice of trespass in the words and figures following:

Complainants' Exhibit No. 16.

Tonopah, Nev., June 10, 1902.

To the North Star Tunnel Co., Frank Golden, Harry Ramsey, L. O. Ray, L. Blumenthal, and all whom it may concern:

You and each of you are hereby notified that you are trespassing upon the Mizpah Intersection mining claim, which was formerly the Dave Lewis Hope claim. The trespass above mentioned consists of sinking a shaft and unlawfully occupying the ground embraced in the location of the said Mizpah Intersection mining claim.

Thomas W. Chandler, Mary Thompson, and the undersigned are the lawful owners of the above mining claim, and this is to give you notice that the owners of said claim will hold you liable for damages for the unlawful occupation and retention of said claim from the rightful owners.

JEROME P. PORTER.

That notwithstanding said protest and notice, the Tonopah North Star Tunnel and Development Company, through its agents and employees, have continued in forcible possession of said mining claim and premises, and did refuse to permit the lawful owners thereof, the said Porter, Chandler, Jury, Thompson, and affiant, to have a survey made of their said claim and property, although the said owners have the possession which the

law imputes to the holder of the legal title; that the original locators Lewis and Carr sold and conveyed their respective interests in said Dave Lewis Hope claim (otherwise known as Mizpah Intersection) to the said Porter, Chandler, and Thompson, who have made other transfers and conveyances, so that at the present time the legal title to the property in dispute is vested in the said Porter, Jury, Chandler, Thompson, and affiant, which several transfers and conveyances will appear by reference to the certified abstract of title from the office of the County Recorder for Nye County, State of Nevada, marked Exhibit "D," hereto annexed and hereby made a part of this affidavit.

And this affiant further says: that the said Ivanpah quartz mine, vein, lode or mineral deposit, as shown by the notice and diagram posted on said claim, and a copy thereof filed in the United States Land Office at Carson City, Nevada, with said Tonopah North Star Tunnel and Development Company's application for patent, embraces a large and substantial part of the Dave Lewis Hope claim (otherwise known as Mizpah Intersection) which is the property of the said Porter, Jury, Chandler, Thompson, and affiant, as fully appears by reference to the diagram or plat marked exhibit "E," hereto annexed and made a part of this affidavit, which diagram or plat shows the relative situation or position of the Dave Lewis Hope claim (otherwise known as Mizpah Intersection) and of the pretended Ivanpah lode.

And this affiant further says: That he, and his co-owners aforesaid are informed and believe that the said

Tonopah North Star Tunnel and Development Company, applicant for patent, well knew that the said Porter, Jury, Chandler, Thompson, and affiant were the owners of said vein or lode and premises, and were and are entitled to the peaceful possession thereof, and that the said Porter, Chandler, Thompson, and affiant had not forfeited, abandoned or surrendered the same.

And this affiant further says: That this protest is made in entire good faith, and with the sole object of protecting the legal rights and the property of the said Porter, Jury, Chandler, Thompson, and affiant in the said Dave Lewis Hope (otherwise known as Mizpah Intersection) lode and mining premises.

CHARLES J. CARR.

Subscribed and sworn to before me this 14th day of November, A. D. 1903.

[Seal]

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California.

Exhibit "B."

CERTIFIED COPY OF NOTICE OF LOCATION OF
AUGUST 26, 1901.

Notice is hereby given that the undersigned has this day located fifteen hundred linear feet on this vein or lode, supposed to run in a northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction and five hundred feet in a northwesterly direction. This mine is situated

in the hill or mountain east of the group of mines known as the Tonopah Mines, owned by J. L. Butler and Co.

This mine shall be known as the Dave Lewis Hope. Situated in Tonopah Mining District, Nye County, Nevada. Dated Aug. 26, 1901.

Locators: DAVE R. LEWIS.

CHAS J. CARR.

750 feet each.

Recorded Sept 2, 1901, in Book "E" of Min. Loc., p. 123-124, Nye Co., Nev. Records.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, county recorder of Nye County, Nevada, do hereby certify that the foregoing is a true and correct copy of the Loc. Cert. of the Dave Lewis Hope Mine as the same appears of record in my office in Book "E" of Min. Loc., pp. 123-4 thereof.

Witness my hand and official seal this 9th day of February, A. D. 1903.

[Seal]

W. J. RICE,
County Recorder.

Exhibit "C."

CERTIFIED COPY OF ADDITIONAL AND
AMENDED CERTIFICATE OF LOCATION

FILED MAY 17, 1902.

Additional and Amended Certificate of Location "Mizpah Intersection."

Know all men by these presents that the undersigned

Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located, and claimed, and by these presents does amend, locate and claim by the right of the original discovery, and the location thereof made such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by Federal laws and by the laws of the State of Nevada now in force, and local customs and rules fifteen hundred linear feet, on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law. Together with three hundred feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim.

This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record in Book E of Mining Location, pages 123 and 124, Nye County, Nevada Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said County and State, the name of this lode in future will be the Mizpah Intersection, the date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the point of the discovery shaft there is claimed by me one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction, along the course of said lode or vein, the general course of

this vein is north 8° west by south 8° east. The discovery shaft or its equivalent is situated upon the claim eight hundred feet south from the north end center, and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 feet deep. This further additional and amended certificate is made and filed without waiver of any previously acquired and existing rights in and to said mining claim, but for the purpose of correcting any errors or omissions in the original location, or location certificate, description, or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada, Approved March 16th, 1897. And the amendments thereto. And of conforming to the requirements of law. The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them by deed of conveyance. This said location is described by metes and bound as follows, to wit: Commencing at apex of hill at post of monument, and running north 8° west, five hundred feet to center end post marked N. end center Mizpah Intersection, thence three hundred feet west 8° south to the northwest corner post marked N. W. corner Mizpah Intersection, thence seven hundred and fifty feet south 8° east to the west center side line post marked W. center side line Mizpah Intersection, thence 750 feet south 8° east to southwest corner, marked SW. corner Mizpah Intersection, thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection, thence three hundred feet east 8° north to southeast corner post marked

S. E. corner post Mizpah Intersection, thence 750 feet north 8° west to east center side line marked E. center side line Mizpah Intersection, thence seven hundred and fifty feet north 8° west to northeast corner post marked NE. center post Mizpah Intersection, thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection, thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LATHROP.

R. A. VAUGHN.

Filed for record June 12th, 1902, at 12:15 P. M., R. C. Gordon, M. R. W. B. Sollender, Acting Recorder.

I hereby certify that the above is a correct copy of the additional and amended certificate of location of the "Mizpah Intersection" Mining Claim recorded in Book C, pages 394 and 395 of the Tonopah Mining Records.

WM. J. LANDERS,

Recorder Tonopah Mining District.

CERTIFIED ABSTRACT OF TITLE.

NOTICE OF LOCATION OF DAVE LEWIS HOPE.

Notice is hereby given that the undersigned has this day located fifteen hundred *linear* feet on this vein or lode, supposed to run in an northwest and south E. direction with three hundred feet on each side of the vein. Commencing at this monument and running one thousand feet in a southeasterly direction, and five hundred feet in a northwesterly direction. This mine is

situated in the hill or mountain east of the group of mines known as the Tonopah Mines, owned by J. L. Butler and Co.

This mine shall be known as the Dave Lewis Hope.

Situated in Tonopah Mining District, Nye Co., Nevada.

Dated Aug 26, 1901.

Locators: DAVE R. LEWIS.

CHAS. J. CARR.

750 feet each.

Recorded at request of T. T. Egan, Sept 2, 1901, at 3 P. M.

W. BROUGHER,

Co. Recorder.

ADDITIONAL AND AMENDED CERTIFICATE OF LOCATION.

Know all men by these presents: That the undersigned citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim, by right of the original discovery and the location heretofore made, such deeds, transfers or conveyances as may have been made, and their amended certificate made, filed and recorded, as provided by federal law and by the laws of the State of Nevada now in force and local customs and rules fifteen hundred linear feet, on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips,

angles and variations as allowed by law, together 300 feet on each side of the middle of said vein at the surface and all veins, lodes, ledges, or deposits and surface ground, within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope by which name it is found of record in Book E of Mining Locations, pages 123 and 124, Nye County Nevada Records. It is also found in Book B, page 119, Records of Tonopah *Ming* District, said County and State. The name of this lode in future

Added at request of J. P. Porter, June 9, 1902.

will be the Mizpah Intersection. The date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From the discovery point at the discovery shaft, there is claimed by me 1,000 feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein, the general course of this vein is N. 8° W. by south 8° east.

The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 ft. deep.

This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim but for the purpose of correcting any errors or omissions in the original location or location certificate, description

or record, and for the purpose of securing the benefits of the act of the Legislature of the State of Nevada, approved March 16, 1897, and the amendments thereto; and of conforming to the requirements of law, the amending locator hereto is the original locator or lawful grantee, deriving title and right of possession, by deed of conveyance. This said location is described by metes and bounds as follows to wit: Commencing at apex of hill at post or monument and running north 8° west five hundred feet to center end post marked N. end center Mizpah Intersection, thence three hundred feet west 8° south to the N.

W. corner post, marked N. W. corner Mizpah Intersection, thence seven hundred and fifty feet south 8° east to the west center side line post, marked W. center side line, Mizpah Intersection, thence 750 feet south 8° east to

Added at request of J. P. Porter, June 9, 1902.

southwest corner post marked S. W. corner Mizpah Intersection thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection, thence three hundred feet east 8° north to southeast corner post marked S. E. corner post Mizpah Intersection, thence 750 feet north 8° west to east center side line marked E. center side line Mizpah Intersection, thence seven hundred and fifty feet north 8° west to northeast corner post marked NE. corner post Mizpah Intersection, thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection, thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LOTHROP,
R. A. VAUGHN.

Recorded at request of J. P. Porter, May 17, 1902, at 2
oc'k P. M.

W. BROUGHER,
Co. Recorder,
By Thos. Warburton,
Deputy.

DEED.

Chas. Jr. Carr to T. W. Chandler & Mary Thompson.
Dated April 12, 1902. Consideration \$1000.00. Conveys:
An undivided one Fourth of the Lewis Hope Mining
Claim; also 1/4 interest in and to the Midway Mining
Claim. Acknowledged April 12, 1902, before James L.
King, Commissioner for the State of Nevada, San Fran-
cisco, Cal. Recorded April 10, 1902, in Book O of Deeds,
pages 502-504, Records of Nye County, Nevada. W.
Brougher, Recorder, Thos. Warburton, Deputy.

DEED.

C. J. Carr to Thomas W. Chandler. Dated May 8, 1902.
Consideration, \$10.00. Conveys: An undivided one-quar-
ter interest in and to the Lewis Hope Mining Claim. Ac-
knowledged May 8, 1902, before James L. King, Commis-
sioner for the State of Nevada, San Francisco, Cal. Re-
corded, May 19, 1902, in Book O of Deeds, page 563, 564,
Records of Nye County Nevada. W. Brougher, Recorder,
Thos. Warburton, Deputy.

DEED.

David R. Lewis and Chas. J. Carr, D. R. Lewis, Atty. in fact, to Jerome P. Porter. Dated May 15, 1902. Consideration \$5,500.00. Conveys: All the Lewis Hope Mining Claim, sometimes called The Dave Lewis Hope Claim. Signed by D. R. Lewis only. Acknowledged May 15, 1902, before L. O. Ray, Justice of the Peace, Ray, Nye County, Nevada. Recorded May 19, 1902, in Book O of Deeds, pages 577 to 579, Records of Nye County, Nevada. W. Brougher, Recorder. By Thos. Warburton, Deputy.

DEED.

D. R. Lewis to Jerome P. Porter. Dated May 19, 1902. Consideration, \$5.00. Conveys: An undivided one-quarter interest of the Dave Lewis Hope Mine, situate in Tonopah Mining District, Nye County, Nevada. Acknowledged May 12, 1902, before L. O. Ray, Justice of the Peace for Town of Ray, Nevada, acting for J. P. of Tonopah. Recorded May 24, 1902, in Book O of Deeds, pages 591, 593, Records of Nye County, Nevada. W. Brougher, Recorder. By Thos. Warburton, Dept.

DEED.

Jerome P. Porter to Thos. W. Chandler & Mary Thompson. Dated May 23, 1902. Consideration \$10.00. Conveys: The Mizpah Interception Mine, *formally* known as Dave Lewis Hope Mine. Conveys an undivided one-half. Acknowledged May 24, 1902. Before Clay Peters, Justice of the Peace, Tonopah, Nev. Recorded May 27, 1902 in Book P. of Deeds, pages 4-6, Records of Nye County,

Nevada. W. Brougher, Recorder. By Thos. Warburton, Dept.

DEED.

Mary Thompson, Thos. W. Chandler to C. J. Carr, John G. Jury. Dated June 14, 1902. Consideration \$10.00. Conveys: An undivided one fourth interest in and to the Mizpah Intersection *formally* known as the Dave Lewis Hope Mining Claim. Acknowledged June 19, 1902, before R. B. Treat, Notary Public in and for County & City of San Francisco, Cal. Recorded Nov. 11, 1902, in Book P. of Deeds, pages 513-515, Records of Nye County, Nevada. Thos. Warburton, Recorder.

DEED.

D. R. Lewis to R. B. Davis. Dated June 28, 1902. Consideration \$1.00. Conveys: All his right title and interest in and to the Dave Lewis Hope Quartz Claim. Acknowledged June 30, 1902, before J. R. Duffield, Notary Public in and for Nye County, Nevada. Recorded July 3, 1902, in Book P. of Deeds, page 68-69, Records of Nye County, Nevada. W. Brougher, Recorder. By Thos. Warburton, Deputy.

ASSIGNMENT.

Lothrop & Davis to F. W. Williams. Dated Oct. 29, 1903. Consideration \$———. Conveys: All Property owned by them or either of them including all mining property, stocks, etc. Acknowledged August 29, 1903, before Hugh H. Brown, Notary Public in and for Nye County, Nevada. Recorded Sept. 28, 1903, in Book R. of

Deeds, pages 111-113, Records of Nye County, State of Nevada. W. J. Rice, Recorder.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify that the foregoing is a full, true and correct abstract of title of The Dave Lewis Hope Mining Claim situate in Tonopah Mining District, Nye Co. Nev., Nye County, Nevada, as the same appears of record in my office.

Witness my hand and official seal this 23d day of Oct., 1903.

[Seal]

W. J. RICE,
County Recorder, Nye County, State of Nevada.

By W. H. Cowan,
Deputy.

[Endorsed]: Abstract of Title of Dave Lewis Hope Mining Claim.



DEPARTMENT OF THE INTERIOR.

United States Land Office,

Carson City, Nevada, July 11, 1904.

I hereby certify that the foregoing is a full, true and correct copy of Adverse Claim No. 121, filed in the matter of the application of the Tonopah North Star Tunnel and Development Company for patent for the Ivanpah mining claim, now on file in my office.

O. H. GALLUP,
Register.

Know all men by these presents, that we, Jerome P. Porter, Thos. W. Chandler, John G. Jury, Chas. J. Carr, and Mary Thompson, have made, constituted and appointed, and by these presents do make, constitute and appoint Schuyler Duryee our attorney in fact, for us and each of us, and in our names, to make application to the United States for the patent of certain mining lands in Tonopah Mining District, Nye County, State of Nevada, described as follows:

That certain mining claim located originally as the Dave Lewis Hope Mine according to location thereof made on the 26th day of August, 1901, certificate of said location having been duly recorded in Book "E" of Mining Locations, pages 123 and 124, Records of Nye County, State of Nevada, and also in Book "B," page 119, Mining District Records of Tonopah, Nye County, Nevada; and according to an amended location of said mining claim, wherein the same claim is located by such amended notice,

and designated therein as the Mizpah Intersection Mining Claim, as appears from the record thereof, in Book "F," of Mining Locations, at pages 141 and 142, Records of Nye County, State of Nevada.

And the said Schuyler Duryee is hereby authorized to have the same surveyed, and to take all and any steps that may be necessary to procure from the government of the United States, a patent to the said lands and premises, granting the same to us, and further to adverse any and all claims upon said lands, or any part thereof, in conflict with our rights therein; to commence and prosecute any action or actions against any and all adverse claims and claimants; and in this behalf, to file protests and adverse claims upon any application for patent pending upon said land by adverse claimants, complaints and all other documents or papers necessary for the complete and effectual determination of the rights of the undersigned in and to said mining claim and every part thereof.

In witness whereof, we have hereunto set our hands and affixed our seals this 3d day of November, 1903.

JEROME P. PORTER.

THOS. W. CHANDLER.

JOHN G. JURY.

CHAS. J. CARR.

Mrs. MARY THOMPSON.

State of California,

City and County of San Francisco,—ss.

On this 3d day of November, 1903, before me R. B. Treat, a Notary Public, duly commissioned and sworn,

personally appeared, Thos. W. Chandler, John G. Jury, Chas. J. Carr and Mrs. Mary Thompson, known to me to be the same persons whose names are subscribed to the within instrument, and they duly acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office, in the City and County of San Francisco, State of California, the day and year first above written.

[Seal]

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
County of Calaveras,—ss.

On this 9th day of November, 1903, before me, Lewis J. Hutchinson, a Notary Public duly commissioned and sworn, personally appeared, Jerome P. Porter, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my Official Seal in the town of Angels Camp, in the County of Calaveras, State of California, the day and year first above written.

[Seal]

LEWIS J. HUTCHINSON,

Notary Public in and for the County of Calaveras, State of California.

[Endorsed]: No. 121. Power of Attorney. Jerome P. Porter et al. to Schuyler Duryee. U. S. Land Office, Carson City, Nevada. Filed Nov. 17, 1903. O. H. Gallup, Register. Schuyler Duryee, Grand Hotel, San Francisco. Calif. No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. & Development Co. Certified Copy of Adverse Claim. Complainant's Exhibit No. 7. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 8.

This indenture made the twelfth day of April, A. D. 1902, between Charles J. Carr, of Tonopah, Nye County, State of Nevada, the party of the first part, and Thomas W. Chandler of San Francisco, California, and Mary Thompson (widow) of Berkeley, Alameda County, State of California, the parties of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand (\$1000.00) dollars, gold coin of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said parties of the second part and to their heirs and assigns an undivided one-fourth ($\frac{1}{4}$) interest of, in and to that certain mining property known as and called the Midway Mining Claim situated, lying

or being in Tonopah or Butler, in the County of Nye, State of Nevada; Also an undivided one-fourth ($\frac{1}{4}$) interest of, in and to that certain mining claim known as and called the Lewis Hope Mining Claim situate, lying and being in Tonopah or Butler, Nye County, State of Nevada. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and, also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said parties of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

C. J. CARR. [Seal]

Signed, sealed and delivered in the presence of

HENRY C. DROGER.

State of California,
City and County of San Francisco,—ss.

I, James L. King, a Commissioner for the State of Nevada, duly commissioned and qualified under and by virtue of the laws thereof, residing in the City and County of San Francisco, and State of California, do hereby certify that on the twelfth day of April, A. D. nineteen hundred and two, before me, personally appeared Charles J. Carr, personally known to me to be the person whose name is subscribed to the annexed instrument as party thereto, and to be the individual described in and who executed the said instrument. And the said Charles J. Carr duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal as such Commissioner, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]

JAMES L. KING,

Commissioner for the State of Nevada, in San Francisco,
California, 308 California Street, San Francisco,
Cal.

[Endorsed]: Deed of Mining Claim. Charles J. Carr to Thos. W. Chandler and Mary Thompson. Dated April 12th, A. D. 1902. Recorded at the request of Mary Thompson. Apr. 18, A. D. 1902, at 10 min. past 8 o'clock A. M., in Vol. O of Deeds, pages 503/4, Nye County Rec-

ords. W. Brougher, County Recorder. By Thos. Warburton, Deputy Recorder. Fees, \$3.50.

No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al v. Tonopah North Star Tunnel & Development Co. Complainants' Exhibit No. 8. Filed July 13, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 9.

This indenture, made the eighth day of May, A. D. 1902, at the hour of 3:30 o'clock P. M. of said day between C. J. Carr, of Berkeley, Alameda County, State of California, the party of the first part, and Thomas W. Chandler, of the same place, the party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of ten (\$10.00) dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim, unto the said party of the second part and to his heirs and assigns an undivided one-quarter (1/4) interest of, in and to that certain mining claim known as and called the "Lewis Hope Mining Claim," situated in Tonopah, County of Nye, State of Nevada. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver

bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property possession claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

C. J. CARR. [Seal]

Signed, sealed and delivered in the presence of

HENRY C. DROGER.

JAMES L. KING.

State of California,

City and County of San Francisco,—ss.

I, James L. King, a Commissioner for the State of Nevada, duly commissioned and qualified under and by virtue of the laws thereof, residing in the City and County of San Francisco, and State of California, do

hereby certify that on the eighth day of May, A. D. nineteen hundred and two, before me, personally appeared C. J. Carr, personally known to me to be the person whose name is subscribed to the annexed instrument as party thereto, and to be the individual described in and who executed the said instrument. And the said C. J. Carr duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal as such Commissioner, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]

JAMES L. KING,

Commissioner for the State of Nevada, in San Francisco, California, 308 California Street, San Francisco, Cal.

[Endorsed]: Deed of Mining Claim. C. J. Carr to Thomas W. Chandler. Dated May 8th, A. D. 1902. Recorded at the request of Thos. W. Chandler, May 19, A. D. 1902, at — min. past 8 o'clock A. M., in Vol. "O" of Deeds, page 563/4, Nye Co. Records. W. Brougher, County Recorder. By Thos. Warburton, Deputy Recorder. Fees, \$3.00.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tunnel & Development Co. Complainants' Exhibit No. 9. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 10.

This indenture, made the fifteenth day of May, A. D. 1902, between David R. Lewis of Tonopah, Nye County, Nevada, the party of the first part, and Jerome P. Porter, of the City and County of San Francisco, California, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifty-five hundred dollars, money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents do grant, bargain and sell unto the said party of the second part, and to his heirs and assigns, that certain mine or mining claim in Tonopah Mining District, Nye County, State of Nevada, known as the Lewis Hope Mine, and sometimes known as and called the Dave Lewis Hope Mine, comprising a lode claim 1500x600 feet, located August 26th, 1901, in the names of Dave Lewis and Charles Carr, the notice of such location being recorded in the Recorder's office of said Nye County, in Book E of mining locations, pages 123 and 124. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property,

possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

It is distinctly understood that a good title to the whole of said claim or mine, free and clear of any and all cloud or question is the consideration for the making of such payment of fifty-five hundred dollars.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of

R. R. VAUGHN.

HERMAN REISCHKE.

J. D. LOTHROP.

State of Nevada,
County of Nye,—ss.

On this 15th day of May, in the year one thousand nine hundred and two, before me, L. O. Ray, Justice of the Peace for Ray, Nye County, Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and who duly acknowledged to me that he executed the same

freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Ray the day and year in this certificate first above written.

[Seal]

L. O. RAY,

Justice of the Peace for Ray, Nye County, Nevada.

[Endorsed]: Deed of Mining Claim. David R. Lewis to Jerome P. Porter. Dated May 15, A. D. 1902. Recorded at the request of J. P. Porter, May 19, A. D. 1902, at 50 min. past 8 o'clock A. M., in Vol. "O" of Deeds, page 576/577, Nye Records. W. Brougher, County Recorder. By Thos. Warburton, Deputy Recorder.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. & Development Co. Complainants' Exhibit No. 10. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 11.

This indenture, made the fourteenth day of June, A. D. 1902, between Thomas W. Chandler and Mrs. Mary Thompson (feme sole), both of Berkeley, California, the parties of the first part, and Charles J. Carr, John G. Jury, the parties of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of ten dollars (\$10), gold coin of the United States of America, to them in hand paid by the said parties of the second part, the

receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim, unto the said parties of the second part, and to their heirs and assigns an undivided one-fourth interest in and to that certain mining claim, and location known and located originally as the Dave Lewis Hope Mining Claim, and subsequently located by amended notice as the Mizpah Intersection Mining Claim, situated in Tonopah Mining District, Nye County, State of Nevada. Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

It is agreed by all parties hereto that the interest of the parties hereto shall be as follows: Charles J. Carr, an undivided one-eighth; Thomas W. Chandler, an undivided one-eighth; Mrs. Mary Thompson, an undivided one-eighth, and John G. Jury an undivided one-eighth, and further that neither of the parties hereto will sell, dispose of or encumber his or her said interest, or any

part thereof, without the first obtaining the written consent of all other parties hereto.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said parties of the second part.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

THOS. W. CHANDLER.
MARY THOMSON.

Signed, sealed and delivered in the presence of

R. B. TREAT.

State of California,

City and County of San Francisco,—ss.

On the 19th day of June, in the year nineteen hundred and two, before me, R. B. Treat, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Thomas W. Chandler, known to me to be the person described in, whose name is subscribed to and who executed the annexed instrument, and he acknowledged that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Seal]

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California, Parrott Building.

State of California,
City and County of San Francisco,—ss.

On the 14th day of June in the year nineteen hundred and two, before me, R. B. Treat, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Mary Thompson, unmarried, known to me to be the person described in, whose name is subscribed to and who executed the annexed instrument, and she acknowledged that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Seal]

R. B. TREAT,

Notary Public, in and for the City and County of San Francisco, State of California, Parrott Building.

[Endorsed]: Recorded at request J. G. Jury, Nov. 11, 1902, at 30 min. past 8 A. M. Book "P" of Deeds, page 513/15, Nye County, Nevada, Records. Thos. Warburton, Recorder. Deed. Thomas W. Chandler et al., to Charles J. Carr et al. Dated June 14th, 1902. Fees \$4.00.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Development Co. Complainants' Exhibit No. 11. Filed July 13th, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 12.

This indenture, made the 23d day of May, A. D. 1902, between Jerome P. Porter, the party of the first part, and Thomas W. Chandler and Mary Thompson, the parties of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has sold, remised, released, and forever quit-claimed, and by these presents does sell, remise, release and forever quitclaim, unto the said parties of the second part, and to their heirs and assigns forever an undivided one-half of all that certain piece or parcel of land situate, lying and being in Tonopah, County of Nye, State of Nevada, bounded and described as follows,

Mizpah

to wit: an undivided one-half interest in the Dave Intersection

Lewis Hope Mine, situate in the Tonopah Mining District, Tonopah, Nye Co., State of Nevada, in the hill or mountain east of Tonopah and joining on the Mizpah

Mizpah Intersection

Mine, said Dave Lewis Hope formerly known as Dave Lewis Hope Mine, was located on the 26th day of August, 1901, and certificate of location recorded in Book E of Mining Locations, pages 123 and 124, Nye County, Nevada Records, and also in Book B, page 119, District Records, Tonopah, Nye Co., Nevada, and an additional and amended certificate of location recorded at the request of the party of the first part in Book F of Mining

Locations, page 141/2, Nye County, Nevada Records, on May 17th, 1902, together with an undivided one-half all the dips, spurs and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein; and one-half rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the one-half tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and, also, one-half the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said one-half premises, together with the appurtenances unto the said parties of the second part, and to their heirs and assigns forever. And the said party of the first part and his heirs and assigns, the fee simple title to the said premises and the quiet and peaceable possession thereof in the said parties of the second part, their heirs and assigns, against the said party of the first part, and his heirs and assigns against any and all persons, whomsoever, lawfully claiming or to claim the same shall and will quitclaim, and by these presents forever defend.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said parties of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

JEROME P. PORTER. [Seal]

Signed, sealed and delivered in the presence of

_____ ,

State of Nevada,
County of Nye,—ss.

On this 24th day of May in the year one thousand nine hundred and two, before me, Clay Peters, Justice of the Peace of Tonopah, Nye County, Nevada, personally appeared Jerome P. Porter, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Tonopah, the day and year in this certificate first above written.

[Seal]

CLAY PETERS,

Justice of the Peace for Tonopah, Nye County, Nevada.

[Endorsed]: Deed of Mining Claim. Jerome P. Porter to Thos. W. Chandler and Mary Thompson. Dated May 23, 1902. Recorded at request of Jerome P. Porter, May 27, A. D. 1902, at 40 min. past 10 o'clock, A. M., in Vol. "P" of Deeds, page 4/6, Nye County Records. W. Brougher, Recorder. By Thos. Warburton, Deputy Recorder.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Development Co. Claimants' Exhibit No. 12. Filed July 13th, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "A."

ADDITIONAL AND AMENDED CERTIFICATE OF LOCATION.

Know all men by these presents, that the undersigned, Jerome P. Porter, a citizen of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate, and claim by right of the original discovery, and the location heretofore made, such deeds, transfers, or conveyances as may have been made, and this amended certificate, made, filed and recorded as provided by federal law, and by the laws of the State of Nevada now in force, and local customs and rules, fifteen hundred linear feet on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles, and variations as allowed by law, together with 300 feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim.

This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope Lode, by which name it is found of record in Book E of mining locations, pages 123 and 124, Nye County, Nevada Records. The name of

this lode is Dave Lewis Hope. The date of this amended location is May 17th, 1902. The name of the amending locator is Jerome P. Porter.

From the discovery point at the discovery shaft or monument there is claimed by me 1,000 feet in a southerly direction and five hundred feet in a northerly direction along the course of said lode or vein. The general course of this vein is N. 8° W. by S. 8° E. The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center, and exposes the ledge at a depth of fully ten feet; its dimensions are 5 by 8 by 10 ft. deep.

This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim; but for the purpose of correcting any errors or omissions in the original location, or location certificate, description or record; and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada, approved March 16th, 1897, and the amendments thereto, and of conforming to the requirements of law.

The amending locator hereto is the original locator or lawful grantee deriving title and right of possession from them. This said location is described by metes and bounds as follows, to wit: Commencing at apex of hill at post or monument running north 8° W. 500 ft. to center end post, marked north end center D. L. H.; thence 300 feet west 8° south to N. W. Cor. post, marked N. W. corner; thence 750 feet south 8° E. to west cen-

ter side line post, marked west center side line; thence 750 feet south 8° E. to S. W. corner post, marked S. W. corner; thence 300 feet E. 8° north south center end post, marked south center end line; thence 300 ft. E. 8° N. to S. E. corner post, marked S. E. corner post; thence 750 feet N. 8° W. to east center side line, marked east corner side line; thence 750 feet N. 8° W. to N. E. corner post, marked N. E. corner post; thence 300 feet west 8° S. to north center end post, marked N. center end post; thence 500 feet S. 8° E. to point of beginning.

[Endorsed]: Recorded at request of Jerome P. Porter, May 17, A. D. 1902, at — min. past 2 P. M. in Book "F" of Min. Loc., page 141/2 Nye County, Nevada Records. W. Brougher, Recorder. By Thos. Warburton, Deputy.

No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Co. Add. and Amd. Certificate of Location of Dave Lewis Hope Claim. Defendants' Exhibit "A." Filed July 13, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "D."

This indenture, made the 19th day of May, in the year of our Lord, one thousand nine hundred and two, between D. R. Lewis of Tonopah, Nye Co., State of Nevada, the party of the first part, and Jerome P. Porter of San Francisco, California, the party of the second part;

Witnesseth: That the party of the first part, for and in consideration of the sum of five dollars — of the

United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, convey and quitclaim, unto the said party of the second part, and to his heirs and assigns, all that undivided one-quarter interest mining claim, situated in the Tonopah Mining District, County of Nye, State of Nevada, and bounded and described as follows, to wit: An undivided one-quarter interest of the Dave Lewis Hope mine, situated in Tonopah Mining District, in the hill or mountain east of the group of mines, known as the Tonopah mines, formerly owned by Butler & Co. This said mine was located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, the location was recorded Sept. 2d, 1901, in Book E of mining locations, pages 123 and 124 at Belmont, Nye County, Nevada Records.

Together with all the metals therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoined; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of

E. R. KEEN.

State of Nevada,
County of Nye,—ss.

On this 19 day of May, in the year one thousand nine hundred and two, before me, Clay Peters, Justice of the Peace for Tonopah, Nye County, Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and who duly acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Ray, the day and year in this certificate first above written.

L. O. RAY,

Justice of the Peace for Ray Precinct, Nye County, Nevada. Acting in absence of Justice of Peace of Tonopah precinct.

[Endorsed]: Deed of Mining Claim. D. R. Lewis to Jerome P. Porter. Dated May 19, A. D. 1902. Filed for Record at the Request of J. P. Porter, May 24, A. D. 1902, at 10 min. past 8 o'clock, A. M., and Recorded in Book "O" of Deeds, page 591/593, Nye County Records. W. Brougher, Recorder. By Thos. Warburton, Deputy

Recorder. Filed for Record, June 12th, 1902, at 12:20 P. M. Recorded in Book "C," page 393, Tonopah Mining Records. R. C. Gordon, Recorder. W. B. Sollender, Acting Recorder.

No. 771. U. S. Cir. Court, Dist of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Co. Defendants' Exhibit "D." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "E."

ADDITIONAL CERTIFICATE OF LOCATION.

The Tonopah North Star Tunnel and Development Company, a corporation, hereby declares and files this the additional certificate of location of the Ivanpah Lode Mining Claim, situated in the Tonopah Mining District, Nye County, State of Nevada.

Said claim was located on the 10th day of October, 1901, by Frank M. Ish, who filed his certificate of location of said claim for record in the Tonopah Mining District and the county recorder's office of said Nye County, on the 8th day of Jan., 1902. Said Ish in locating said claim, claimed seven hundred linear feet in a southerly direction and eight hundred linear feet in a northerly direction, from the point of discovery (which is definitely described herein), along said lode and three hundred feet on each side of the center thereof. That on the 15th day of July, 1902, the said Frank M. Ish, conveyed by good and sufficient deeds to the Tonopah North Star Tunnel and Development Company.

all his right, title and interest in and to said Ivanpah claim. That the Tonopah North Star Tunnel and Development Company is now the owner of and in the sole possession of said mining claim. That said mining claim is now and always has been known as the Ivanpah. That the general course of this lode and vein is a northerly and southerly direction, and has its strike on a line equal distance from the side lines thereof. That said claim is situated in section thirty-five, township three north, range forty-two E., M. D. M. The discovery cut is situated at a point north 3 degrees, east 23 minutes west 41 $\frac{5}{10}$ feet from the location and discovery monument, and it is of following dimensions. Four feet wide, twelve feet face, and fourteen feet in length on the bottom. That said cut exposes said lode for a depth of more than ten feet from the surface. All the corners not otherwise hereinafter described are marked by posts four inches square, four and one-half feet in length and set eighteen inches in the ground, with a mound of earth and stone not less than four and one-half feet in diameter at the base and three feet in height, piled up around the post. For a more complete and accurate description of said claim, the field-notes of the survey of said claim by S. K. Bradford, made on the first day of August, 1902, as hereinafter set out and signed by him on this notice as follows, to wit:

Commencing at N. E. Cor. No. 1, a pine post marked N. E. Cor. No. 1 Ivanpah, whence the N. E. Cor. of Sec. No. 35, T. 3 N. R. 42 E. M. D. M. bears N. $11^{\circ} 37'$ E. 1182.2 ft. thence S. $3^{\circ} 23'$ E. 750 ft. to E. side Cor. No.

2, a post marked E. side Cor. No. 2, Ivanpah, 1,500 ft. to S. E. Cor. No. 3, a post marked S. E. Cor. No. 3 Ivanpah; thence $86^{\circ} 37'$ W. 600 ft. to S. W. Cor. No. 4, a post marked S. W. Cor. No. 4, Ivanpah; whence Cor. No. 5, Sur. No. 2,004 Lucky Jim lode bears N. $80^{\circ} 11'$ E. 134 ft. thence N. $3^{\circ} 23'$ W. 750 ft. to W. side Cor. No. 5, a post marked W. side Cor. No. 5, Ivanpah, 1,500 ft. to N. W. Cor. No. 6, a post marked N. W. Cor. No. 6, Ivanpah; thence N. $86^{\circ} 37'$ E. 600 ft. to N. E. Cor. No. 1, place of beginning.

A post marked Loc. Dis. Ivanpah on which a copy of this amended location certificate is posted is set at N. $3^{\circ} 23'$ W. 700 ft. from the center of the south end line of this claim; said post is 4-1/2 ft. long, 4 ins. square, set 18 ins. in ground, with mound of earth and stone 4-1/2 feet in diameter at base, built up around the stone 3 feet in height. Ground in conflict with Lucky Jim not claimed by Ivanpah. This claim is adjoined on the south by the Silver State and Mizpah lodes, and on the west by the Lucky Jim and Mining Chance lode. Magnetic variation at all the corners is $16^{\circ} 52'$ E. I hereby certify that the Ivanpah lode was actually surveyed by me and that the above description is sufficient to identify the claim.

S. K. BRADFORD,
Surveyor.

In witness whereof the Tonopah North Star Tunnel and Development Company, by its Secretary, duly au-

thorized so to do, has hereunto affixed its corporate name and seal.

(Signed) TONOPAH NORTH STAR TUNNEL AND
DEVELOPMENT COMPANY.

[Seal]

By W. J. HARRIS,

Its Secretary.

[Endorsed]: Recorded at request of Key Pittman, Aug. 11, A. D. 1902, at — min. past 8 A. M., in Book "F" of Min. Loc., page 360/362, Nye County, Nevada, Records. W. Brougher, Recorder. By Thos. Warburton, Deputy. Filed for record in the Tonopah Mining District, Recorder's Office, August 20th, 1902, at 1:00 P. M. Recorded in Book "D," page "76," Tonopah, Nye County, Nevada. E. C. Gordon, Recorder. W. B. Solender, Deputy.

No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Company. Add. Cert. of Location of Ivanpah Lode M'g. Claim. Defendants' Exhibit "E." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "F."

No. 958.

APPLICATION FOR PATENT.

United States Land Office, Carson City, Nev.,

August 14, 1903.

Notice is hereby given that in pursuance of Chapter Six of Title Thirty-two of the Revised Statutes of the

United States the Tonopah North Star Tunnel and Development Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Nevada, whose principal place of business is Tonopah, Nye County, Nevada, doing business in the County of Nye and State of Nevada, as a mining corporation, by and through Walter J. Harris, its duly appointed, qualified and acting attorney in fact, whose postoffice address is Carson City, Ormsby County, Nevada, has this day filed its application for a United States Patent for fifteen hundred (1,500) linear feet of the Ivanpah quartz mine, vein, lode or mineral deposit, bearing gold and silver, together with surface ground three hundred (300) feet in width on each side of the center of said lode or vein, lying, being and situate within the Tonopah Mining District, County of Nye, State of Nevada; which is more fully described as to metes and bounds by the official plat and approved field notes of survey thereof, now on file in this office, designated as United States Mineral Survey No. 2053, in section 35, township No. 3, north, range 42 E. M. D. M., as follows, to wit: Beginning at Cor. No. 1, a pine post 4 1/2 feet long, 4 ins. square set 18 ins. in the ground, scribed 1-2053 Cor. Loc. bears north 3° 24' west 38 feet the N. E. Cor. section 35, township 3 north, range No. 42 E. M. D. M., bears north 11° 14' east 1,218 feet. Thence south 3° 24' east 751.4 feet Cor. No. 2, a pine post 4 1/2 feet long, 4 ins. square set 18 ins. in the ground, scribed 2-2053, identical with the east side center of the location 1363.5 feet intersect line 4-5 Sur.

No. 2031, Silver State lode south $78^{\circ} 47'$ east 204.4 feet from Cor. No. 5 1,500 feet. Cor. No. 3, a pine post $4\frac{1}{2}$ feet long, 4 ins. square set 18 ins. in the ground, scribed 3-2053, identical with the S. E. Corner of the location. Thence south $86^{\circ} 39'$ west 192.5 feet intersect line 2-3 Sur. No. 2012, Mizpah lode south $5^{\circ} 07'$ east 19.3 feet from Cor. No. 2, line 1-5 Sur. No. 2031, south $5^{\circ} 07'$ east 188.1 feet from Cor. No. 5, Sur. No. 2031, 600.0 feet Cor. No. 4, a pine post $4\frac{1}{2}$ feet long 4 ins. square set 18 ins. in the ground, scribed 4-2053, identical with the S. W. Cor. of the location. Thence north $3^{\circ} 24'$ west 6.7 feet intersect line 1-2 Sur. No. 2012, Mizpah lode, south $84^{\circ} 53'$ west, 407 feet, from Cor. No. 2, identical with south side line Triangle lode survey 74, 6 feet intersect line 3-4 Sur. No. 2004, Lucky Jim lode north $84^{\circ} 43'$ west 153.1 feet from Cor. No. 3, 639.4 feet intersect north line Sur. No. 2004 north $84^{\circ} 43'$ west 335 feet from Cor. No. 1, 748.6 feet Cor. No. 5 a pine post $4\frac{1}{2}$ feet long, 4 ins. square, set 18 ins. in the ground scribed 5-2053 identical with west side center of location 1063.5 feet intersect south end line of Mining Chance lode south $70^{\circ} 18'$ west 142.3 feet from S. E. Cor. No. 3, 1500 feet Cor. No. 6, a pine post $4\frac{1}{2}$ feet long, 4 ins. square set 18 ins. in the ground scribed 6-2053 when the N. W. Cor. of the location bears north $3^{\circ} 24'$ west 38 feet. Thence north $86^{\circ} 39'$ east 22.1 feet intersect east side line of Mining Chance lode north $19^{\circ} 28'$ west 412.5 feet from S. E. Cor. No. 3, 300 feet to a point whence the location notice bears south $3^{\circ} 24'$ east 800.4 feet a pine post $4\frac{1}{2}$ feet long, 4 ins.

square, set 18 ins. in the ground, scribed Loc. 2053, identical with the Loc. monument of the location. The discovery cut bears south $3^{\circ} 24'$ east 758.4 feet, 600 feet Cor. No. 1, the place of beginning, containing 2066 acres. Less area in conflict with Mining Chance lode, surveyed .79, less area in conflict with Sur. No. 2004, Lucky Jim lode 3.42, less area in conflict with Sur. No. 2031 Silver State Lode .72, less area in conflict with Sur. No. 2012 Mizpah lode .12. The Triangle lode surveyed 1.70. Leaving a net area claimed of 13.91 acres. The magnetic variation at all the corners is $16^{\circ} 52'$ east. Substantial monuments of earth and stone $4 \frac{1}{2}$ feet at the base and 2 feet high are erected at all the corners around the posts; and pine posts 2 feet long, 4 ins. square and 2 ins. by 4 ins. are set 12 ins. in the ground at all the intersections properly scribed with the intersecting lines, numbers of surveys or name of the claim. Expressly excluding all that portion of the Mining Chance lode in conflict with survey No. 2053 described as follows: Beginning at Cor. No. 6 Sur. No. 2053, thence north $86^{\circ} 39'$ east 22.1 feet intersect east line of the Mining Chance lode. Thence south $19^{\circ} 28'$ east 412.5 feet S. E. Cor. No. 3 Mining Chance lode. Thence south $70^{\circ} 18'$ west 142.3 feet intersect line 5-6 Sur. No. 2053. Thence north $3 \text{ deg. } 24'$ west 436.5 feet Cor. No. 6, the place of beginning, containing 0.79 acres. Also expressly excluding all that portion of the Lucky Jim lode Sur. No. 2004 in conflict with Sur. No. 2053, described as follows: Beginning at the intersection of the north side line of Sur. No. 2004 with line 4-5 Sur. No. 2053,

thence south 84 deg. 43' east 335.0 feet Cor. No. 1, Sur. No. 2004, thence south 6 deg. 41' west 298.2 feet Cor. No. 2, Sur. No. 2004, thence south 24 deg. 20' west 275.6 feet Cor. No. 3, Sur. No. 2004, thence north 84 deg. 43' west 151.1 feet intersect line 4-5 Sur. No. 2053, north 3 deg. 24' west 74.6 feet from Cor. No. 4, thence north 3 deg. 24' west 564.8 — to point of intersection, the place of beginning, containing 3.42 acres.

Also expressly excluding all that portion of the Silver State lode, Sur. No. 2031, in conflict with Sur. No. 2053 described as follows: Beginning at Cor. No. 3, Sur. No. 2053, thence north 3 deg. 24' west 136.5 feet intersect line 4-5 Sur. No. 2031, thence north 78 deg. 47' west 204.4 Cor. No. 5, Sur. No. 2031, thence south 5 deg. 07' east 168.8 feet Cor. No. 2, Sur. No. 2012, Mizpah lode 188.1 feet intersect line 3-4 Sur. No. 2053, thence north 86 deg. 39' east 192.5 feet Cor. No. 3, the place of beginning, containing 0.72 acres. Also expressly excluding all that portion of the Mizpah lode Sur. No. 2012, in conflict with Sur. No. 2053, described as follows: Beginning at Cor. No. 4, Sur. No. 2053, thence north 86 deg. 39' east 407.5 feet intersect line 2-3 Sur. No. 2012 1-4 Sur. 2031, thence north 5 deg. 07' west 19.3 feet Cor. No. 2, Sur. No. 2012, thence south 84 deg. 53' west 407.0 feet intersect line 4-5 Sur. No. 2053, thence south 3 deg. 24' east 6.7 feet Cor. No. 4, the place of beginning, containing 0.12 acres. Also expressly excluding all that portion of the Triangle lode, surveyed, in conflict with Sur. No. 2053, described as follows: Beginning at Cor. No. 2 Sur. No. 2012, Mizpah

lode, thence south 84 deg. 53' west 407 feet intersect line 4-5 Sur. No. 2053, thence north 3 deg. 24' west 67.9 feet intersect south side line Sur. No. 2004, thence south 84 deg. 43' east 153.1 feet Cor. No. 3, Sur. No. 2004, thence north 24 deg. 20' east 275.6 feet Cor. No. 2, Sur. No. 2004, thence north 6 deg. 41' east 291.8 feet intersect north side line of the Triangle lode, thence north 76 deg. 07' east 7.8 N. E. Cor. Triangle, thence south 10 deg. 19' east 569.3 feet Cor. No. 2, the place of beginning, containing 1.70 acres.

The original certificate of location of the Ivanpah quartz mine is of record in the office of the recorder of Tonopah Mining District, Nye County, Nevada, in book "C" records of said district, at page 32 thereof. The amended and additional certificate of location of said Ivanpah quartz mine is of record in the recorder's office of the Tonopah Mining District, Nye County, Nevada, in book "D" records of said Tonopah Mining District, at pages 76 and 77 thereof; and of record in the recorder's office of Nye County, State of Nevada, in book "F" of mining locations, at pages 360 to 362 inclusive, of the records of said county.

The presumed general course or direction of the said Ivanpah quartz mine, vein, lode or mineral deposit is shown upon the plat posted on said claim and as near as can be determined from present developments, has a northerly and southerly course or strike; the claim being for 700 feet south and 800 feet north from the location monument along said vein, lode or mineral deposit, together with 300 feet on each side of the center

thereof. The names of the adjoining mining claims and the names of the owners or claimants thereof are as follows: On the north, Pyramid Fraction, surveyed, applicant, claimant; Idahoan No. 3 and Mining Chance, surveyed, Montana Tonopah Mining Company, claimant; on the east, Elaine, surveyed, applicant, claimant; on the south, survey No. 2012, Mizpah lode, Tonopah Mining Company of Nevada, claimant, and survey No. 2031, Tonopah Belmont Mining Company, claimant; on the west Triangle, surveyed; survey No. 2004, Lucky Jim, Jack Rabbit and Mining Chance Mining Claims, Montana Tonopah Mining Company, claimant. Said claims as shown on the official plat posted on said Ivanpah quartz mine. And all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof so described, surveyed, platted and applied for, are hereby notified that unless their adverse claims are duly filed according to law, and the regulations thereunder, within the time prescribed by law, with the register of the United States land office at Carson City, County of Ormsby, State of Nevada, they will be barred by virtue of the provisions of the said statute.

O. H. GALLUP,
Register.

It is hereby ordered that the foregoing notice of application for patent be published for the period of ten consecutive weeks in the Tonopah Bonanza, a weekly newspaper published at Tonopah, State of Nevada.

O. H. GALLUP,
Register.

Date of first publication, September 19, 1903.

KEY PITTMAN,

Law Attorney for Applicant, Rooms 2 and 4, Golden
Block, Tonopah, Nev.

4-229.

CERTIFICATE THAT NOTICE REMAINED POSTED
SIXTY DAYS.

United States Land Office, at Carson City, Nev.,

Dec. 8, 1903.

I hereby certify that a notice, of which the attached notice is a copy, of application No. 958, by the Tonopah North Star Tunnel & Dev. Co., for a patent for the Ivanpah Lode Mining Claim, remained conspicuously posted in this office for the full period of sixty days; that said notice was posted on the 14th day of Sept., A. D. 1903, and remained posted until the 8th day of Dec., A. D. 1903; that during that time the plat of the official survey No. 2053 of said claim remained in this office, and that adverse claim has been filed, November 17, 1903, No. 121.

O. H. GALLUP,

Register.

U. S. Land Office, Carson City, Nevada,

July 13, 1904.

I hereby certify that the forgoing is a true and correct copy of certificate that notice remained posted sixty days in mineral application No. 958, Ivanpah lode Mining Claim now on file in my office.

O. H. GALLUP,

Register.

[Endorsed]: No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel & Development Company. Ivanpah's Application for Patent. Defendant's Exhibit "F." Filed July 15th, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "G."

MIZPAH INTERSECTION.

AMENDED AND ADDITIONAL CERTIFICATE OF LOCATION.

Know all men by these presents: That the undersigned citizens of the United States, has this 17th day of May, 1902, amended, located and claimed, and by these presents does amend, locate and claim, by right of the original discovery and the location heretofore made, such deeds, transfers or conveyances as may have been made, and this amended certificate made, filed and recorded as provided by Federal law and by the laws of the State of Nevada, now in force, and local customs and rules fifteen hundred linear feet on this lode, vein, ledge or deposit, bearing gold, silver, lead, copper and other valuable minerals, with all its dips, angles and variations as allowed by law, together with 300 feet on each side of the middle of said vein at the surface, and all veins, lodes, ledges or deposits and surface ground within the lines of said claim. This said lode was originally located by D. R. Lewis and Chas. J. Carr on the 26th day of August, 1901, and named the Dave Lewis Hope, by which name it is found of record

in Book E. of Mining Locations, pages 123 and 124, Nye County, Nevada, Records. It is also found in Book B, page 119, Records of Tonopah Mining District, said county and State. The name of this lode in future will be the Mizpah Intersection. The date of this amended location is made the 17th day of May, 1902. The name of the amending locator is Jerome P. Porter. From this discovery point at the discovery shaft there is claimed by me 1000 feet in a southeasterly direction and five hundred feet in a northwesterly direction, along the course of said lode or vein, the general course of this vein is N. 8° W. by south 8° east. The discovery shaft or its equivalent is situated upon the claim 800 feet south from the north end center and exposes the ledge at a depth of fully ten feet. Its dimensions are 5 by 8 by 10 ft. deep. This further additional and amended certificate of location is made and filed without waiver of any previously acquired and existing rights in and to said mining claim but for the purpose of correcting any errors or omissions in the original location or location certificate, description or record, and for the purpose of securing the benefits of the Act of the Legislature of the State of Nevada, approved March 16th, 1897, and the amendments thereto; and of conforming to the requirements of law, the amending locator hereto is the original locator or lawful grantee, deriving title and right of possession by deed of conveyance. This location is described by metes and bounds as follows, to wit: Commencing at apex of hill at post or monument and running north 8° west five hundred feet to center end post, marked N. end center Mizpah Intersection,

thence three hundred feet 8° south to the N. W. corner post, marked N. W. corner, Mizpah Intersection, thence seven hundred and fifty feet south 8° east to the west center side line post marked W. center side line Mizpah Intersection, thence 750 feet south 8° east to S. west corner post marked S. W. corner Mizpah Intersection, thence three hundred feet east 8° north to south center end post marked south center end line Mizpah Intersection, thence three hundred feet east 8° N. to southeast corner post marked S. E. corner post Mizpah Intersection, thence 750 feet north 8° west to east center side line marked E. center side line, Mizpah Intersection, thence seven hundred and fifty feet north 8° west to northeast corner post marked N. E. corner post Mizpah Intersection, thence three hundred feet west 8° south to north center end post marked N. center end post Mizpah Intersection, thence five hundred feet south 8° east to the point of beginning.

Locator: JEROME P. PORTER.

Witness: J. D. LOTHROP.

R. A. VAUGHN.

Recorded at request of J. P. Porter, May 17, 1902, at
2 o'clock P. M.

W. BROUGHER,

Co. Recorder.

By Thos. Warburton,

Deputy.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true

and correct copy of Amended and Additional Certificate of Location of Dave Lewis Hope or Mizpah Intersection Mining Claim, recorded on the 17th day of May, 1902, at 2 o'clock P. M., and as the same appears of record in Book F of Mining Locations, page 141, Nye County, Nevada, Records. Witness my hand and official seal this 24th day of November, 1903.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

[Endorsed]: Abstract of Title of Dave Lewis Hope or Mizpah Intersection Mining Claim. No. 771. U. S. Circuit Court, Dist. of Nevada. Jerome P. Porter, et al. vs. Tonopah North Star Tun. & Development Company. Add. and Amended Certificate of Location of Mizpah Intersection Claim, on pp. 3, 4, 5. Defendants' Exhibit "G." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "H."

State of Nevada,
Nye Co.

Know *al* men by these presents, that I, F. M. Ish, have this 10 day of October, 1901, located 1500 *liniar* ft. on the Ivanpah Lode or vein or deposit, together with 300 ft. on each side of the middle of the vein 700 ft. running southerly and 800 ft. running northerly from center of discovery monument situated in *Tonoph* Mining district, Nye

County, State of Nevada, to wit, the south end of this claim adjoins the north side line of the Mizpah Mine and crosses a portion of the east end of the *lucky Jim* is situated on the west and northwest slope of the high hill, northeast of the Town of Tonopah known as the *odie* peak.

Filed for record Jan. 8, 1902, at request of Geo. Coslett.

T. F. EGAN,
Dist. Recorder.

Recorded at request of T. F. Egan, Feb. 8, 1902, at 20 min. past 9 o'clock A. M.

W. BROUGHER,
Co. Recorder.

By Thos. Warburton,
Deputy.

Recorded in Book E of Mining Locations, page 241.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of Location Notice of Ivanpah Mining Claim, Tonopah, Nye County, Nev., recorded on the 8th day of Feb. 1902, at 9:20 o'clock A. M., and as the same appears of record in Book E of Mining Locations, page 241, Nye County, Nevada, Records.

Witness my hand and official seal this 28th day of June, 1904.

[Seal]

W. J. RICE,
County Recorder, Nye County, State of Nevada.

By W. H. Cowan,
Deputy.

ADDITIONAL CERTIFICATE OF LOCATION.

The Tonopah North Star Tunnel and Development Company, a corporation, hereby declares and files this the additional certificate of location of the Ivanpah Lode Mining Claim situated in the Tonopah Mining District, Nye County, State of Nevada. Said claim was located on the 10th day of October, 1901, by Frank M. Ish, who filed his certificate of location of said claim for record in the Tonopah Mining District and the County Recorder's office of said Nye County, on the 8th day of June, 1902. Said Ish in locating said claim claimed seven hundred linear feet in a southerly direction and eight hundred linear feet in a northerly direction, from the point of discovery (which is *definitely* described herein) along said lode and three hundred feet on each side of the center thereof. That on the 15th day of July, 1902, the said Frank M. Ish, conveyed by good and sufficient deeds to the Tonopah North Star Tunnel and Development Company all his right, title and interest in and to said Ivanpah claim. That the Tonopah North Star Tunnel and Development Company is now the owner of and in the sole possession of said mining claim. That the said mining claim is now and always has been known as the Ivanpah. That the general course of this lode and vein is a northerly and southerly direction, and has its strike, on a line equal distance from the side lines thereof. That said claim is situated in section thirty-five, township three north, range forty-two E., M. D. M. The discovery cut is situated at a point north 3 degrees east 23 minutes west 41 $\frac{5}{10}$ feet from this location and dis-

covery monument, and it is of the following dimensions. Four feet wide, twelve feet face and fourteen feet in length on the bottom. That said cut exposes said lode for a depth of more than ten feet from the surface. All the corners not otherwise hereinafter described, are marked by posts four inches square, four and one-half feet in length and set eighteen inches in the ground, with a mound of earth and stone not less than four and one-half feet in diameter at the base and three feet in height, piled up around the post. For a more complete and accurate description of said claim, the field-notes of the survey of said claim by S. K. Bradford made on the first day of August, 1902, as hereinafter set out and signed by him on this notice, as follows, to wit: Commencing at N. E. Cor. No. 1 a pine post marked N. E. Co. No. 1 Ivanpah whence the N. E. Cor. Sec. No. 35 T. 3 N. R. 42 E. M. D., bears N. $11^{\circ} 37'$ E. 1182.2 feet, thence south $3^{\circ} 28'$ E. 750 feet to the E. side Cor. No. 2 a post marked E. side Cor. No. 2. Ivanpah 1500 ft. to S. E. Cor. No. 3 a post marked S. E. Cor. No. 3. Ivanpah, thence $86^{\circ} 37'$ W. 600 feet to Sec. Cor. No. 4 a post marked S. W. Cor. No. 4 Ivanpah whence Cor. No. 5 Sur. No. 2004 Lucky Jim lode bears N. $80^{\circ} 11'$ E. 134 ft. thence N. $3^{\circ} 23'$ W. 750 ft. to W. side Cor. No. 5 a post marked W. side Cor. No. 5. Ivanpah 1500 feet to N. W. Cor. No. 6 a post marked N. W. Cor. No. 6 Ivanpah, thence W. $86^{\circ} 37'$ E. 600 ft. to N. E. Cor. No. 1, place of beginning. A post marked Loc. Dis. Ivanpah in which a copy of this amended location certificate is posted, is set at N. $3^{\circ} 23'$ W. 700 ft. from the center of the south end line of this claim. Said post is $4\frac{1}{2}$ ft. long

4 ins. square, set 18 ins. in the ground, with mound of earth and stone 4 1/2 ft. in diameter at base, built up around the stone 3 feet in height. Ground in conflict with Lucky Jim not claimed by Ivanpah. This claim is adjoined on the south by the Silver State and Mizpah Lodes and on the west by the Lucky Jim and Mining Chance Lode. Magnetic variation at all the corners is 16° 52' E. I hereby certify that the Ivanpah Lode was actually surveyed by me, and that the above description is sufficient to identify the claim.

S. K. BRADFORD,
Surveyor.

In witness whereof the North Star Tunnel and Development Company, by its Secretary, duly authorized so to do, has hereunto affixed its corporate name and seal.

(Signed) TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY,

[Seal]

By W. J. HARRIS,
Its Secretary.

Recorded at request of Key Pittman, Aug. 11, 1902, at
8 o'clock A. M.

W. BROUGHER,
Recorder.

By Thos. Warburton,
Deputy.

Recorded in Book F of Mining Locations, pages 360 to
362.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of Amended and Additional Certificate of Location of Ivanpah Mining Claim, recorded on the 11th day of August, 1902, at 8 o'clock A. M., and as the same appears of record in Book F of Mining Locations, page 360, Nye County, Nevada, records.

Witness my hand and official seal this 28th day of June, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

Frank M. Ish, to Tonopah North Star Tunnel & Develop.
Co.

This indenture, made the 15th day of July, in the year of our Lord one thousand nine hundred and two, between Frank M. Ish, the party of the first part, and Tonopah North Star Tunnel and Development Company (a corporation) the party of the second part. Witnesseth: That the party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents, grant, convey and quitclaim, unto the said party of the second part, and to its successors and assigns, all that certain quartz *cert* Mining Claim, situ-

ated in the Tonopah Mining District, County of Nye, State of Nevada, and bounded and described as follows, to wit: All that certain Mining Claim, known and recorded as the "Ivanpah" Quartz Mining Claim, said claim being situated upon the west slope of Oddie Mountain, about two hundred feet below the summit, being the same located by the grantor on the 10th day of October, 1901. Together with all the metals therein and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, and also, all and singular, the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular the said premises, together with the appurtenances, and privileges thereunto incident, unto the said party of the second part, its successors and assigns forever. In witness whereof the said party of the first part, has hereunto set his hand and seal, the day and year first above written.

FRANK M. ISH. [Seal]

Signed, sealed and delivered in the presence of

KEY PITTMAN.

State of Nevada,
County of Nye.

On this 15th day of July, in the year one thousand nine hundred and two, before me Josiah R. Duffield, a notary public, in and for Nye County, State of Nevada, personally appeared Frank M. Ish, known to me to be the same person, whose name is subscribed to the within instrument and he duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned. In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the county of Nye, the day and year in this certificate first above written.

[Seal]

JOSIAH R. DUFFIELD,

Notary Public, in and for the County of Nye, State of Nevada.

Recorded at request of Key Pittman, Aug. 11, 1902, at 8:05 A. M.

W. BROUGHER,

Co. Recorder.

By Thos. Warburton,

Deputy.

Recorded in Book P of Deeds, pages 168 to 170.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify that the foregoing is a full, true and correct abstract of title of The Ivanpah Min-

ing Claim, situated in Tonopah Mining District, Nye County, Nevada, Nye County, Nevada, as the same appears of record in my office. Witness my hand and official seal, this 28th day of June, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

[Endorsed]: Abstract of Title. Ivanpah Mining Claim. No. 771. U. S. Circuit Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Development Co. Defendants' Exhibit "H." Filed July 15, 1904. T. J. Edwards, Clerk.

Defendant's Exhibit "I."

General Land Office.

Mineral Certificate.

No. 38,138.

No. 744.

The United States of America, To All to Whom These Presents Shall Come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the general land office of the United States, the plat and field-notes of survey and the certificate, No. 744, of the Register of the land office at Carson City, in the State of Nevada, accompanied by other evidence whereby it appears that the Montana Tonopah Mining Company did, on the twenty-second day of December, A. D. 1903, duly enter and pay for

that certain mining claim or premises, known as the Lucky Jim Lode Mining Claim, designated by the Surveyor-general as lot No. 2004, embracing a portion of section thirty-five, in township three north of range forty-two east, Mount Diablo Meridian, in the Tonopah Mining District, in the County of Nye, and State of Nevada, in the District of lands, subject to sale at Carson City, and bounded, described, and platted as follows, with magnetic variation sixteen degrees and fifty-two minutes east. Beginning at corner No. 1, from which the northeast corner of section thirty-five, in township three north of range forty-two east, Mount Diablo meridian, bears north twelve degrees east two thousand one hundred and sixty-six and seven-tenths feet distant. Thence, first course, south six degrees and forty-one minutes west two hundred and ninety-eight and two-tenths feet to corner No. 2. Thence, second course, south twenty-four degrees and twenty minutes west two hundred and seventy-five and six-tenths feet to corner No. 3. Thence third course, north eighty-four degrees and forty-three minutes west six hundred and ninety-seven and eight-tenths feet to corner No. 4; one thousand four hundred and fifty-three and one-tenth feet to corner No. 5.

Thence, fourth course, north twenty-four degrees and twenty minutes east five hundred and ninety-one feet to corner No. 6, from which the center of discovery monument bears south forty-seven degrees and nine minutes east four hundred and fifty-nine and one-tenth feet distant. Thence, fifth course, south eighty-four degrees and forty-three minutes east seven hundred and fifty

feet to corner No. 7; one thousand three hundred and fifty-seven and four-tenths feet to corner No. 1; the place of beginning; said lot No. 2004, extending one thousand four hundred and forty and five-tenths feet in length along said Lucky Jim vein or lode, and containing eighteen acres and thirty-one hundredths of an acre of land, more or less.

Now, Know Ye, that there is, therefore, hereby granted by the United States unto the said Montana Tonopah Mining Company, and to its successors and assigns; the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Lucky Jim, vein, lode or ledge, and of all other veins, lodes and ledges, throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 2002, extended downward vertically, although such veins, lodes or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises: Provided, that the right of possession to such outside parts of said veins, lode or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 2004, so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes, or ledges. And provided, further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights; privileges; immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever; subject, nevertheless, to the above-mentioned, and to the following conditions and stipulations:

First.—That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second.—That the premises hereby granted shall be held, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third.—That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Theodore Roosevelt, Presi-

dent of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand at the city of Washington, the third day of March, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States, the one hundred and twenty-eighth.

By the President: T. ROOSEVELT.

[Seal]

By F. M. McKEAN,
Secretary.

C. H. BRUSH,

Recorder of the General Land Office.

E. G. E. Recorded Vol. 381, pages 427 to 429, inclusive.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Co. Lucky Jim Patent. Defendants' Exhibit "I" Filed July 15, 1904. T. J. Edwards, Clerk.

United States of America,
District of Nevada,—ss.

I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true and correct copy of the original thereof now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in

Carson City, this the 12th day of August, A. D. 1904, and in the year of our Independence, the 129th.

[Seal]

T. J. EDWARDS,
Clerk.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star T. & D. Co. Certified Copy of Lucky Jim Patent, Substituted for the Original Patent, which was Introduced by the Defendant as Exhibit "I." Filed August 12, 1904. T. J. Edwards, Clerk.

Defendant's Exhibit "J."

4-462.

General Land Office.

Mineral Certificate.

No. 38,139.

No. 745.

The United States of America, To All to Whom These Presents Shall Come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title, thirty-two and legislation supplemental thereto, there have been deposited in the general land office of the United States the plat and field-notes of survey and the certificate, No. 745, of the Register of the land office at Carson City, in the State of Nevada, accompanied by other evidence whereby it appears that the Montana Tonopah Mining Company, did, on the twenty-second day of December, A. D. 1903, duly enter and pay for that certain mining claim or premises, known as the Triangle

Lode Mining Claim, designated by the surveyor-general as lot No. 2074, embracing a portion of section thirty-five, in township three north of range forty-two east, Mount Diablo meridian, in the Tonopah Mining District, in the County of Nye, and State of Nevada, in the District of lands subject to sale at Carson City and bounded, described, and platted as follows, with magnetic variation sixteen degrees and fifty-two minutes east.

Beginning at corner No. 1, from which the northeast corner of section thirty-five, in township three north of range forty-two east, Mount Diablo meridian, bears north eleven degrees and forty-eight minutes east two thousand one hundred and sixty-nine and seven-tenths feet distant. Thence, first course, south ten degrees and nineteen minutes east five hundred and sixty-nine and three-tenths feet to corner No. 2. Thence, second course, south eighty-four degrees and fifty-three minutes west four hundred and seven feet intersect line 4-5, the west side line, of survey No. 2053, the Ivanpah Lode Claim; one thousand three hundred and eighty-nine and nine-tenths feet to corner No. 3 of survey No. 2030, the Campfire Lode Claim; one thousand four hundred and thirty-six and seven-tenths feet to corner No. 4 of said survey No. 2030; one thousand four hundred and eighty-three and five-tenths feet to corner No. 3, situate on the south line of the Midway location, unsurveyed, from which discovery bears north sixty-six degrees and sixteen minutes east two hundred and fifty-two and three-tenths feet distant. Thence, third course, north ten degrees and nineteen minutes west sixty-one feet inter-

sect line 4-5, of said survey No. 2030, at north forty-five degrees and fifty-two minutes west eighty and two-tenths feet from corner No. 4, also intersect the north-east end line of said Midway location, at north forty-five degrees and fifty-two minutes west eighty and two-tenths feet from the southeast corner of said location; two hundred and seventy-one and four-tenths feet intersect line 4-5 of survey No. 2004, the Lucky Jim Lode Claim, amended, at north eighty-four degrees and forty-three minutes west five hundred and sixty-seven and eight-tenths feet from corner No. 4; three hundred and forty-three feet to corner No. 4. Thence, fourth course, north seventy-six degrees and seven minutes east five hundred and fourteen and two-tenths feet intersect line 1-2 of said survey No. 2030, at north forty-five degrees and fifty-two minutes west sixty-seven and eight-tenths feet from corner No. 2; one thousand one hundred and thirty-five and nine-tenths feet intersect said line 4-5 of survey No. 2053; one thousand four hundred and seventy-two and five-tenths feet intersect line 1-2 of said survey No. 2004, at north six degrees and forty-one minutes east two hundred and ninety-one and seven-tenths feet from corner No. 2, and from said corner No. 2, corner No. 3 of said claim bears south twenty-four degrees and twenty minutes west two hundred and seventy-five and six-tenths feet distant, one thousand four hundred and eighty and three-tenths feet to corner No. 1, the place of beginning. Expressly excepting and excluding from these presents all that portion of the ground hereinbefore described, embraced in said mining claims

or surveys Nos. 2004, 2030, and said Midway location, unsurveyed, and that portion of said survey No. 2053 in conflict with said survey No. 2004, and also all that portion of said Triangle vein or lode, and of all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground; said lot No. 2074, extending one thousand four hundred and eighty and three-tenths feet in length along said triangle vein or lode; the granted premises in said lot containing four acres and sixty-hundredths of an acre of land, more or less.

Now Know Ye, that there is therefore hereby granted by the United States unto the said Montana Tonopah Mining Company, and to its successors and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Triangle vein, lode, or ledge, and of all other veins, lodes, and ledges, throughout their entire depth the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 2074 extending downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside of the vertical side lines of said premises: Provided, that the right of possession to such outside parts of said vein, lodes, or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 2074, so continued in their own direction that such planes will intersect such exterior parts of said

veins, lodes, or ledges. And provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever; subject nevertheless to the above-mentioned and to the following conditions and stipulations.

First.—That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode, or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode or ledge.

Second.—That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third.—That in the absence of necessary legislation by Congress, the legislature of Nevada may provide

rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed. Given under my hand at the City of Washington, the third day of March, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States, the one hundred and twenty-eighth.

By the President:

T. ROOSEVELT.

[Seal]

By F. M. McKEAN,

Secretary.

C. H. BRUSH,

Recorder of the General Land Office.

E. G. E. Recorded Vol. 380, pages 445 to 448, inclusive.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Co. Triangle Lode Patent. Defendant's Exhibit "J." Filed July 15, 1904. T. J. Edwards, Clerk.

United States of America,

District of Nevada.—ss.

I, T. J. Edwards, Clerk of the Circuit Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true

and correct copy of the original thereof now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at my office, in Carson City, this the 12th day of August, A. D. 1904, and in the year of our Independence the 129th.

[Seal]

T. J. EDWARDS,
Clerk.

[Endorsed] No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star T. & D. Co. Certified Copy Triangle Lode Patent, Substituted for the Original Patent, which was Introduced in Evidence by Defendant as Exhibit "J." Filed August 12, 1904. T. J. Edwards, Clerk.

Defendants' Exhibit "C."

This indenture, made the 15th day of May, in the year of our Lord one thousand nine hundred and two. Between David R. Lewis of Tonopah, Nye County, Nevada, and Charles J. Carr of Berkeley, California, by his attorney in fact, David R. Lewis of Tonopah, Nevada, the parties of the first part, and Jerome P. Porter of San Francisco, California, the party of the second part, Witnesseth: That the said parties of the first part, for and in consideration of the sum of five thousand and five hundred (\$5,500.00) dollars, in gold coin of the United States of America, to them in hand paid by the said party of the second part, at or before the ensailing and delivery of these presents; the receipt whereof

is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain mine or mining claim situate, lying and being in the said County of Nye and State of Nevada and particularly described as follows, to wit:

That certain claim or location located August 26th, 1901, in the names of Dave Lewis and Charles Carr, the notice of which location is recorded in the office of the County Recorder of said Nye County, in Book E. of Min. Loc., at page 123 and 4. The said mine or mining claim is 1,500 feet in length by 600 feet in width and is known as and called the Lewis Hope Mine, otherwise sometimes called the Dave Lewis Hope Mine. Situate in Tonopah Mining District.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remained and remainder, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above-described premises and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of:

R. A. VAUGHN.

J. D. LOTHROP.

HERMAN REISCHKE.

State of Nevada,
County of Nye,—ss.

On this 15th day of May, in the year one thousand nine hundred and two, before me, L. O. Ray, Justice of the Peace for Ray, Nye County, Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and who duly acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Ray the day and year in this certificate first above written.

[Seal]

L. O. RAY,

Justice of the Peace, for Ray, Nye County, Nevada.

[Endorsed]: Deed. David R. Lewis and Charlie J. Carr to Jerome P. Porter. Dated May 15, A. D. 1902. Recorded at the request of J. P. Porter, on the 19th day of May, A. D. 1902, 9 A. M., in liber "O" of Deeds, pages 578/579, Records of Nye County, Nevada. W.

Brougher, County Recorder. By Thos. Warburton, Deputy.

No. 177. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Company. Defendants' Exhibit "C." Filed July 15, 1904. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER et al.

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY,
Respondent.

No. 771.

Order Enlarging Time to File Record on Appeal.

Good cause appearing there, it is hereby ordered that the time in which to file the record on appeal, in this cause, be and the same is hereby enlarged so as to include the 28th day of August, 1905.

THOMAS P. HAWLEY,

Judge.

Dated, July 28, 1905.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star T. & D. Co. Order Enlarging Time to File Record on Appeal. Filed July 28, 1905. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER et al.

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY.

} No. 771.

Order Enlarging Time to File Record on Appeal.

Good cause appearing thereof, it is hereby ordered that the time in which to file the record on appeal in this cause be, and the same is hereby, enlarged so as to include Friday, the first day of September, 1905.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tun. & Devel. Co. Order Enlarging Time to File Record on Appeal. Filed Aug. 26, 1905. T. J. Edwards, Clerk.

No. 771.

Complainants' Exhibit No. 14.

T. J. E.

This card must be neatly and correctly made up and addressed at the post office where the article is registered.

Postmark of Delivering Office
 BUTLER
 Jun
 17
 6 P. M.
 1902
 NEV.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked and mailed to the sender.

And date of Delivery.

POST OFFICE DEPARTMENT.

Official Business.

Penalty of \$300 for Private Use.

Return to:

Name of Sender, *J. P. Porter.*

Street and Number, }
 or Post Office Box. } *906 Market St.*

Post Office at *San Francisco,*

County, State *Cal.....*

Form No. 1548.

REGISTRY RETURN RECEIPT.

Received from the Postmaster at *Butler, Nev.*
 (Delivering office.)

Registered Letter No. *1572,* from *Butler, Nev.*
 (Office of origin.)

Addressed to *To The Secretary of North Star Tunnel Co.*
 (Name of addressee.)

Date, 190

(Date of Delivery.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

F. Golden.

(Signature or name of addressee.)

.....

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order.

When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

[Written across face:] San Francisco, Cal., Jul. 5, 9:30 A. M., 1902.

[Endorsed]: No. 771. U. S. Circuit Court, District of Nevada. Jerome P. Porter et al. vs. Tonopah North Star Tunnel and Development Co. Registry Receipt. Complainants' Exhibit No. 14. Filed July 15, 1904. T. J. Edwards, Clerk.

Complainants' Exhibit No. 17.

D. R. Lewis to R. B. Davis.

This indenture made the 28th day of June, in the year of our Lord, one thousand nine hundred and two, between D. R. Lewis of Tonopah, Nye County, State of Nevada, the party of the first part, and R. B. Davis, of the same place, the party of the second part, Witnesseth, that the said party of the first part, for and in

consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land, situate in the Tonopah Mining District, County of Nye, State of Nevada, and bounded and particularly described as follows, to wit: All his right, title and interest in and to that certain quartz or lode claim, known and recorded in said district and county, as the Dave Lewis Hope quartz claim. Said claim lies on the west side of Oddie Mountain, and was located by grantee on the 26th day of August, 1901, together with all dips, spurs and angles, and other lodes or veins apexing within said ground, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

D. R. LEWIS. [Seal]

Signed, sealed and delivered in the presence of

KEY PITTMAN.

State of Nevada,
County of Nye,—ss.

On this 30th day of June, in the year one thousand nine hundred and two, before me, J. R. Duffield, notary public in and for Nye County, State of Nevada, personally appeared D. R. Lewis, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

J. R. DUFFIELD,
Notary Public.

Recorded at request of Geo. Bartlett, July 3, 1902, at 10 min. past 8 o'ck. A. M.

W. BROUGHER,
Co. Recorder.
By Thos. Warburton,
Deputy.

State of Nevada,
County of Nye,—ss.

I, W. J. Rice, County Recorder of Nye County, State of Nevada, do hereby certify the foregoing to be a full, true and correct copy of deed from D. R. Lewis to R. B. Davis, recorded on the 3d day of July, 1902, at 8:10 A. M., and as the same appears of record in Book P of Deeds, pages 68, 69, Nye County, Nevada Records.

Witness my hand and official seal this 16th day of
May, 1904.

[Seal]

W. J. RICE,

County Recorder, Nye County, State of Nevada.

By W. H. Cowan,

Deputy.

[Endorsed]: Certified Copy of Deed. R. D. Lewis to
R. B. Davis. Recorded at request of Geo. Bartlett, July
3, A. D. 1902, at 10 min. past 8 A. M., in book P of Deeds,
pages 68-69, Nye County, Nevada Records. W. Brougher,
Recorder. By Thos. Warburton, Deputy.

No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome
P. Porter et al. vs. Tonopah North Star Tun. & Develop-
ment Co. Deed—Lewis to Davis. Complainants' Ex-
hibit No. 17. Filed July 15, 1904. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Petition for Appeal and Order Allowing Same.

The above-named plaintiffs, considering themselves aggrieved by the decree entered herein on th 20th day of February, 1905, in the above-entitled proceeding, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

GAROUTTE & GOODWIN,

WELLES WHITMORE,

Attorneys for Appellants.

Order.

And now, to wit, on this 25th day of May, 1905, it is ordered that said appeal be allowed as prayed for, the requisite assignment of errors having been filed.

THOMAS P. HAWLEY,

Judge.

The bond on the above appeal is hereby fixed at five hundred dollars (\$500).

THOMAS P. HAWLEY,

Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter et al., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, Defendants. Appeal and Order Allowing Appeal to United States Court of Appeals. Filed May 25, 1905. T. J. Edwards, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOS. W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Petition for Appeal and Order Allowing Same.

The above-named plaintiffs, considering themselves aggrieved by the decree entered herein on the twentieth day of February, 1905, in the above-entitled proceeding, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WELLES WHITMORE and
GAROUTTE & GOODWIN,

Attorneys for Appellants.

Order.

And now, to wit, on this 29th day of May, 1905, it is ordered that said appeal be allowed as prayed for upon the filing of a bond in the sum of five hundred dollars (\$500), the requisite assignment of errors having been filed.

THOMAS P. HAWLEY,

Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, v. Tonopah North Star Tunnel and Development Company, Defendant. Appeal. Filed May 29th, 1905. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Bond on Appeal.

Know all men by these presents, that we, Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mrs. Mary Thompson, as principals, and the United States Fidelity and Guaranty Company, a corporation, duly organized under the laws of the State of Maryland and duly authorized to transact business in the State of Nevada, as surety, are held and firmly bound unto Tonopah North Star Tunnel and Development Company, a corporation. defendant named, in the sum of five hundred (\$500.00) dollars, to be paid to the said Tonopah North Star Tunnel and Development Company, or its assigns, to which payment well and truly to be made, we bind ourselves and each of us; jointly and severally; and our and each of our successors; representatives and assigns; firmly by these presents.

Sealed with our seals and dated the 27th day of May, A. D., 1905.

Whereas, the above-named plaintiffs, Jerome P. Porter, John G. Jury, Thos. W. Chandler, Charles J. Carr and Mrs. Mary Thompson, has taken an appeal to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, to reverse the decree in the above-entitled cause by the Circuit Court of the United States, Ninth Circuit, District of Nevada.

Now, therefore, the condition of the above obligation is such that if the above-named plaintiffs shall prosecute said appeal to effect and answer all costs and damages if it shall fail to make its plea good, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the said United States Fidelity and Guaranty Company, a corporation, hath caused its corporate name and seal to be hereunto affixed by its duly authorized officer, the day and year above written.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

[Seal]

By H. V. D. JOHNS,
Its Attorney in Fact.

Form of bond and sufficiency of surety approved.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, v. Tonopah North Star Tunnel

and Development Company, Defendant. Appeal Bond. Filed, May 29th, 1905. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.*

JEROME P. PORTER, JOHN G.
JURY, THOMAS W. CHANDLER,
CHARLES J. CARR and Mrs.
MARY THOMPSON,

Plaintiffs,

vs.

TONOPAH NORTH STAR TUNNEL
AND DEVELOPMENT COMPANY
(a Corporation),

Defendant.

Assignment of Errors.

Come now the plaintiffs and appellants and present this their assignment of errors herein, and say that in the record and proceedings herein there is error in this, to wit:

1. That the Circuit Court of the United States, Ninth Circuit, District of Nevada, erred in deciding this case against the plaintiffs and in favor of the defendant.

2. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was located on the Hog Back near the summit of Mount Oddie.

3. That said Court erred in finding and deciding that the location monument of the Dave Lewis Hope Claim was not situated about 300 feet north of the cut near the North Star shaft.

4. That the Court erred in finding and deciding that on October 10, 1901, the ground then located by F. M. Ish as the Ivanpah Claim was vacant public mineral lands subject to location.

5. That said Court erred in finding and deciding that the location made by F. M. Ish as the Ivanpah Claim was a valid location.

6. That said Court erred in finding and deciding that F. M. Ish, the locator of the Ivanpah Claim and the owners thereof, fully complied with the law in making said location and have the better right and title to the ground covered by said location.

7. That said Court erred in finding and deciding that the locator of the Ivanpah Claim could establish by proof outside of the certificate of location all or any of the essential facts required to make a valid location.

8. That said Court erred in finding and deciding that the proof of such facts outside of the record certificate are prima facie evidence of such other facts as are required to be stated in such certificate.

9. That said Court erred in finding and deciding that the original notice of location can be filed and recorded as provided by law within 90 days after the date of location thereof, and can be called and considered a certificate of location.

10. That said Court erred in finding and deciding "if

the locator is satisfied with his original notice he can file same within 90 days and can call it his certificate of location.”

11. That said Court erred in finding and deciding that the defendant had proved all the necessary facts entitling it to a patent.

12. That said Court erred in finding and deciding that the plaintiffs failed to establish by a preponderance of evidence the validity of the Dave Lewis Hope Claim, and that it includes a portion of the ground embraced within the boundaries of the Ivanpah location.

13. That said Court erred in overruling the objection of the plaintiffs to and admitting in evidence the verbal testimony of the witness F. M. Ish, giving his recollection of the contents of the notice of location made by him of the Ivanpah Claim, and in permitting the following question to be answered by said witness in that regard: “Q. Can you state the contents of the notice?”

14. That said Court erred in denying the motion of plaintiffs to strike out from the testimony of the witness John McCune the purported statements made to him by David Lewis, and in overruling the objection of plaintiffs to any declarations made by said Dave Lewis, to any person out of the presence of the co-locator or of the plaintiffs in this action.

15. That said Court erred in permitting the witness John McCune, over the objection and exception of the plaintiffs, to answer the following question: Regarding statements made to him by David Lewis concerning

the monuments pointed out to him by David Lewis, to wit: "Now what did Lewis say about these three monuments?"

16. That said Court erred in permitting the witness Uri B. Curtis, over the objection and exception of plaintiffs, to answer the following questions: "State whether or not you know the general reputation of Charles J. Carr in the community in which he lives for truth, honesty and integrity, answer yes or no?" "State whether it was good or bad."

17. That said Court erred in permitting the witness T. L. Oddie to answer the following question, over the objection and exception of plaintiffs, to wit: "Mr. Oddie, how many fires in Tonopah did you hear connected with Mr. Carr or suspicion talked about with reference to Mr. Carr, if any?"

18. That said Court erred in permitting the witness W. J. Harris to testify, over the objection and exception of the plaintiffs, to his other conversations with Dave Lewis, and his examination of a purported time book kept by said Dave Lewis, and the contents thereof.

19. That said Court erred in permitting the witness R. B. Davis to testify to the conversations and declarations made by David Lewis over the objection and exception of the plaintiffs, in response to the following question: "Now state to the Court the substance of that trip."

20. That said Court erred in permitting the witness R. B. Davis to produce an account-book and testify to

the items of said account in answer to the following question, over the objection and exception of plaintiffs:

“I would like you to turn in this book, upon the back of which is marked December 21, 1901, to February 28, 1902, to the accounts for the month of February. The entry in first part of February. Now, commencing Feb. 2 see if there is any account of David Lewis,” and admitting said account in evidence.

21. That said Court erred in denying the motion of plaintiffs to strike out from the record the statement of the account of David Lewis with the witness R. B. Davis, as follows, to wit: “A. David Lewis by McCune. 2½ lbs. of powder, 40c; ½ box of caps, 35c; 150 ft. of fuse, 40c.”

22. That said Court erred in overruling the objection to and admitting in evidence the amended certificate of location of the Ivanpah Claim, which was admitted and read in evidence and marked Defendant’s Exhibit “E.”

Whereas, by the law of the land said judgment ought to have been given for the plaintiffs and appellants and against the defendant and respondent, said appellants pray that the decree and judgment aforesaid given and entered herein by the said Circuit Court be reversed, annulled and held for naught, and that they, and each of them be restored to all things which have been lost by occasion of the said ruling, judgment and decree.

WELLES WHITMORE,
GAROUTTE & GOODWIN,
Attorneys for Appellants.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter et als., Plaintiffs, vs. Tonopah North Star Tunnel and Development Company, Defendant. Assignment of Errors. Filed May 25, 1905. T. J. Edwards, Clerk.

In the Circuit Court of the United States, Ninth Circuit District of Nevada.

JEROME P. PORTER, JOHN G. JURY, THOMAS W. CHANDLER, CHARLES J. CARR and Mrs. MARY THOMPSON,	} Plaintiffs,
vs.	
TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY (a Corporation),	} Defendant.

Assignment of Errors (Additional).

Comes now the plaintiffs and appellants and present the following additional assignment of errors in the record and proceedings herein which was inadvertently omitted from the assignment of errors filed on May 25, 1905:

23. That said Court erred in finding and deciding that the plaintiffs are not, and never were, the owners,

or in the possession, or entitled to the possession of any part of that certain mining claim or premises situated, lying and being in the Tonopah Mining District, Nye County, State of Nevada, designated as the Ivanpah Lode Mining Claim.

24. That said Court erred in finding and deciding that Frank M. Ish and his grantees and successors have been in actual, peaceable, quiet, open and notorious possession since October 10, 1901, of the mining claim and premises and area embraced within the boundary liens of the "Ivanpah" mining claim.

25. That said Court erred in finding and deciding that the defendant is the owner (subject to the paramount title of the United States) and entitled to possession of the premises and area described in the application for patent for the said "Ivanpah" Mining Claim, and that by itself, its predecessors in interest and grantors, it has been such owner (subject to such paramount title) by virtue of the location thereof, and by virtue of compliance with the Acts of Congress and customs of the Tonopah Mining District, by said defendant, and its predecessors in interest and grantors, ever since the 10th day of October, 1901.

26. That said Court erred in finding and deciding that the plaintiffs have no estate or interest or posses-

sion or right of possession of, in or to any part or portion of the said "Ivanpah" Lode Mining Claim, and that the plaintiffs' claim of any estate or interest or right as against any part or portion of the said "Ivanpah" Lode Mining Claim is invalid and void.

Now come the attorneys for the plaintiffs in the above-entitled proceeding and petition that they may be allowed to file the foregoing additional assignment of errors which, through inadvertence and mistake, was omitted from the assignment of errors filed May 25, 1905, and further petition that the same may be received and considered as having been filed on the said 25th day of May, 1905.

WELLES WHITMORE and
GAROUTTE & GOODWIN,
Attorneys for Appellants.

And now, to wit, on this 27th day of May, 1905, it is ordered that the aforesaid petition be granted and it is hereby granted, and that the foregoing assignment of errors be filed as of May 25, 1905, providing the same be filed before or at the time of the filing of the bond.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: No. 771. Circuit Court of United States, Ninth Circuit, District of Nevada. Jerome P. Porter, et al., Plaintiffs, v. Tonopah North Star Tunnel and Development Company, Defendant. Assignment of Errors (Additional). Filed May 29th, 1905, as of date May 25, 1905. T. J. Edwards, Clerk. By H. D. Edwards, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit District of Nevada.

JEROME P. PORTER et al.,	}	No. 771.
Complainants,		
vs.		
TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY,		
Respondent.		

Clerk's Certificate to Transcript.

I, T. J. Edwards, Clerk of the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of Nevada, do hereby certify that the foregoing 411 typewritten pages numbered from 1 to 411, both inclusive, are a true and full copy of the record and of all proceedings in the cause therein entitled.

I further certify that the costs for making this record amount to the sum of \$283.60, and that the same has been paid by the complainants.

In witness whereof, I have hereunto set my hand and the seal of said Circuit Court, at Carson City, Nevada, this 30th day of August, 1905.

[Seal]

T. J. EDWARDS,

Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Tonopah North Star Tunnel and Development Company (a Corporation),
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the Circuit Court of the United States, for the Ninth Circuit, District of Nevada, wherein Jerome P. Porter, John G. Jury, Thomas W. Chandler, Charles J. Carr and Mrs. Mary Thompson are appellants, and, you are appellee, to show cause, if any there be, why the decree rendered against the said appel-

lants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable THOMAS P. HAWLEY, United States District Judge for the District of Nevada, this 28th day of June, A. D. 1905.

THOMAS P. HAWLEY,
United States District Judge, Presiding in said Circuit Court.

Copy received this 30th day of June, A. D. 1905.

CAMPBELL & METSON,
KEY PITMAN,
R. M. JACKSON,
Attorneys for Defendant.

[Enclosed]: No. 771. United States Circuit Court of Appeals, for the Ninth Circuit. Jerome P. Porter et al., Appellants, vs. Tonopah North Star Tunnel and Development Co., Appellee. Citation. Filed July 3d, 1905. T. J. Edwards, Clerk United States Circuit Court, District of Nevada.

[Endorsed]: No. 1241. United States Circuit Court of Appeals for the Ninth Circuit. Jerome P. Porter, John G. Jury, Thomas W. Chandler, Charles J. Carr and Mrs. Mary Thompson, Appellants, vs. Tonopah North Star Tunnel and Development Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Nevada.

Filed September 1, 1905.

F. D. MONCKTON,

Clerk.



Complainants' Exhibit No. 3.

[Endorsed]: No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. and Develop't. Co. Photographic View of Ground in Controversy. Complainants' Exhibit No. 3. Filed July 11, 1904. T. J. Edwards, Clerk.

No. 1241. U. S. Circuit Court of Appeals for the Ninth Circuit. Complainants' Exhibit 3. Received September 1, 1905. F. D. Monckton, Clerk.



Complainants' Exhibit No. 5.

[Endorsed]: No. 771. U. S. Cir. Court, Dist. of Nevada. Jerome P. Porter et al. v. Tonopah North Star Tun. and Devel. Co. Photographic View of Ground in Controversy. Complainants' Exhibit No. 5. Filed July 11th, 1904. F. J. Edwards, Clerk.

No. 1241. U. S. Circuit Court of Appeals for the Ninth Circuit. Complainants' Exhibit 5. Received September 1, 1905. F. D. Monckton, Clerk.

